

# EXHIBIT A



**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESAL PRICE LITIGATION	) ) MDL No. 1456 ) Master File No. 01-12257-PBS ) Subcategory Case No. 03-10643-PBS )
THIS DOCUMENT RELATES TO:	)
<i>The City of New York, et al.</i>	) Judge Patti B. Saris )
v.	) Magistrate Judge Marianne Bowler )
<i>Abbott Laboratories, et al.</i>	) )

**PLAINTIFFS' THIRD REVISED NOTICE OF 30(b)(6) DEPOSITION OF  
SCHERING-PLOUGH CORPORATION, SCHERING CORPORATION, AND  
WARRICK PHARMACEUTICALS CORPORATION**

PLEASE TAKE NOTICE that, pursuant to Rules 26 and 30 of the Federal Rules of Civil Procedure, plaintiffs, The City of New York, et al., will take the deposition, by oral examination, of a representative of Schering-Plough Corporation, Schering Corporation, and Warrick Pharmaceuticals Corporation (hereinafter "Schering Group") for purposes of the above-captioned action. The deposition shall commence at **9:30 a.m. EST, Tuesday, March 16, 2010**, continuing day to day until completed, at a mutually agreeable location in either New York or New Jersey.

This deposition will take place before a notary public, or any other officer authorized to administer oaths, and will be recorded by stenographic and visual means. The deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure.

As used herein, the term "Subject Drugs" refers to Schering Group drugs and NDCs identified in Exhibit A attached hereto. Pursuant to CMO 33, the time period covered by the

topics identified in this Notice of Deposition is 1997 through 2005. To the extent they are relevant, this notice incorporates by reference the definitions and rules of construction delineated in plaintiffs' First Request for Production of Documents to All Defendants, dated October 18, 2007.

Schering Group shall designate one or more officers, directors, managing agents or other representatives to testify on the behalf of Schering Group, and may set forth, for each representative, the matters to which that representative will testify. The representative(s) shall testify under oath about the following topics:

1. Schering Group's sales and/or joint venturing of the Subject Drugs, including but not limited to, sales strategies, sales staff training, sales meetings, competitive sales research, sales staff evaluations, and sales forecasts relating to the Subject Drugs.

2. Schering Group's marketing and/or joint venturing of the Subject Drugs, including but not limited to, marketing decisions, plans, and strategies, market share research, product launches, and advertising relating to the Subject Drugs

3. Schering Group's pricing decisions, pricing strategies, and pricing recommendations, including but not limited to, decisions, strategies, and recommendations regarding the price discounts, rebates, chargebacks, credits, inventory management agreements, and other forms of price reductions relating to the Subject Drugs.

4. Identification and description of all contract prices, net prices, direct prices, discounts, rebates (commercial), chargebacks and other price concessions offered by Schering Group with respect to the sale of the Subject Drugs.

5. The drugs on the Subject Drugs list, which were subject to contract pricing.

6. Schering Group's contract prices and/or direct prices with wholesalers, retailers, physicians, clinics, outpatient pharmacies and/or buying groups for the Subject Drugs.

7. Identification of Schering Group's customers who purchase or distribute the Subject Drugs, from and including 1997 through 2005, including, without limitation, wholesalers, specialty or general distributors, retailers (including but not limited to retail chains, Staff Model HMO pharmacies, PBM mail order and other mail order pharmacies), GPO's and direct purchasers.

8. Schering Group's databases which contain information concerning sales transactions, contract pricing, direct pricing, net pricing, AWP pricing, WAC pricing, discounts, commercial rebates, chargebacks and/or other price concessions and/or monetary incentives of any nature relating to the Subject Drugs.

9. Schering Group's setting of AWP, recommended/suggested AWP, and/or WAC prices for the Subject Drugs, and the reasons for setting those prices.

10. Schering Group's posting and/or recording in its records the contract prices, net prices, discounts, chargebacks, rebates (commercial) and/or other price concessions relating to its sale of the Subject Drugs.

11. Any communications regarding the Subject Drugs occurring between Schering Group and First DataBank, Red Book and/or Medispan (collectively the "Price Reporting Services"), including but not limited to price reporting, price verifications, price confirmations, and/or price approvals for any pricing information including, but not limited to, AWP, SWP, WAC or any WAC equivalent, and/or DP (collectively "Any Pricing Information") that Schering Group provided to the Price Reporting Services, and Schering Group's definitions of these pricing terms.

12. Schering Group's definitions for Any Pricing Information including, but not limited to, AWP, SWP, WAC or any WAC equivalent, and/or DP, and the identification of any documents relating thereto.

13. Schering Group's reason(s) for providing the Price Reporting Services Any Pricing Information including, but not limited to, AWP, SWP, WAC or any WAC equivalent, and/or DP.

14. Schering Group's knowledge of the relationship between Any Pricing Information that Schering Group provided to the Price Reporting Services, and any such information published by the Price Reporting Services for the Subject Drugs.

15. Schering Group's knowledge or understanding of how the Price Reporting Services used Any Pricing Information supplied by Schering Group including, but not limited to the transmission of that information to New York Medicaid.

16. The action(s), if any, taken by Schering Group to stop, object to, or otherwise oppose the publication of the WAC or AWP by the Price Reporting Services for any of the Subject Drugs and the reason(s) for any such action.

17. Schering Group's communications with customers defining or explaining the meaning or components of its various Pricing Information for prescription drugs.

18. Schering Group's knowledge of wholesaler markups regarding the sale of Schering Group's prescription drugs.

19. Whether Schering Group ever had the ability to determine the actual AWP for its drugs (i.e., the actual average prices charged by wholesalers to their customers for Schering Group's drugs), and, if so, whether Schering Group in fact determined such actual AWP's for its drugs.

20. Schering Group's knowledge, whether direct or indirect, of the net prices paid by Medicaid healthcare providers to wholesalers, distributors, or to Schering Group directly for the Subject Drugs, from and including 1997 through 2005.

21. Whether Schering Group ever communicated to the Price Reporting Services that the AWP that Schering Group provided to these entities was neither a price that was actually an average of wholesale prices, nor a price that was actually paid by retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health-care entities, or doctors for the Subject Drugs, and, if so, when such communications took place and of what such communications consisted.

22. Whether Schering Group ever communicated to anyone in New York Medicaid that the AWP that Schering Group provided to the Price Reporting Services was neither a price that was actually an average of wholesale prices, nor a price that was actually paid by retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health-care entities, or doctors for the Subject Drugs, and, if so, when such communications took place and of what such communications consisted.

23. Whether Schering Group ever communicated to the Price Reporting Services that the WAC that Schering Group provided to these entities was not the net price actually paid by wholesalers to Schering Group for the Subject Drugs, and, if so, when such communications took place and of what such communications consisted.

24. Whether Schering Group ever communicated to New York Medicaid that the WAC that Schering Group provided to the Price Reporting Services was not the net price actually paid by wholesalers to Schering Group for the Subject Drugs, and, if so, when such communications took place and of what such communications consisted.

25. Schering Group's communications and correspondence with New York Medicaid from and including 1997 through 2005.

26. Whether Schering Group ever provided Any Pricing Information and/or average manufacturer's price (hereinafter "AMP") to New York Medicaid (apart from providing such information pursuant to plaintiffs' discovery requests in this case).

27. Schering Group's understanding and belief regarding the confidentiality provisions of the Medicaid Rebate statute, 42 U.S.C. §1396r-8, as it pertains to AMP.

28. Whether Schering Group contends that New York Medicaid were not prohibited by federal law from determining, and could have determined, the AMPs of the Subject Drugs based on the Unit Rebate Amount for such drugs provided to the State by the federal government pursuant to the Medicaid Rebate statute, 42 U.S.C. §1396r-8, *et seq.*, and if so, all bases for such contention.

29. Schering Group's methodologies for calculating AMP for its products sold during the period 1997 through 2005, including knowledge of the data and accounting methods used.

30. Schering Group's policies and practices concerning the disclosures that providers (retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health-care entities, doctors, hospitals, clinics), wholesalers, and pharmacy benefit managers may make of Any Pricing Information they receive from Schering Group for the Subject Drugs.

31. Schering Group's knowledge of whether First DataBank increased the AWP's for the Subject Drugs from WAC+20% to WAC+25% in or around 2001-2002 and the action(s), if any, taken by Schering Group in response including, but not limited to, any studies, analyses or white papers regarding this issue.

32. To the extent Schering Group stopped providing Any Pricing Information to the Price Reporting Services for any of the Subject Drugs, identify such information and provide the reason(s) for doing so.

33. The information and/or data that Schering Group has purchased, licensed, subscribed to, obtained, and/or reviewed from the Compendia or IMS relating to the Subject Drugs, including but not limited to pricing, market share, and services.

34. Schering Group's knowledge of the relationship between the pricing information including, but not limited to, AWP, recommended/suggested AWP, SWP, WAC or any WAC equivalent, and/or DP

35. The corporate history and organizational structure of Schering Group, including any current and/or former parent companies to Schering Group, any joint ventures involving Schering Group, any predecessor entities of Schering Group, and any subsidiaries held by Schering Group at any time.

36. The formal corporate relationship between Schering-Plough Corporation and each of its subsidiaries Schering Corporation and Warrick Pharmaceuticals Corporation.

37. The day-to-day reporting and approval relationships between each of the companies listed in paragraph 36.

38. The Board of Directors of each of the companies listed in paragraph 36.

39. The types of documents regularly exchanged between each of the companies listed in paragraph 36.

40. The existence of documents reflecting or evidencing any policies or practices regarding Schering-Plough Corporation's (or its employees') approval of, or contribution to, pricing actions (including the setting of prices of whatsoever kind or the publication thereof)



taken by Schering-Plough Corporation's subsidiaries Schering Corporation and/or Warrick Pharmaceuticals Corporation.

41. A description of which company pays the salary, bonuses, options, and/or any other forms of remuneration to the companies listed in paragraph 36.

42. Direct communications between Schering Group (or Schering Group's counsel or representatives) and plaintiffs, the State of New York Medicaid agency, the State of New York Attorney General's Office, and/or counsel for plaintiffs.

43. Whether Schering Group contends that any damages claimed by the New York Counties should be offset by the rebates paid by Schering Group to New York Medicaid under the federal Medicaid Rebates statute, 42 U.S.C. §1396r-8, *et seq.*, and, if so, the bases for such contention and the information or documents that support such contention.

44. Schering Group's knowledge, belief, and/or understanding as to whether the rebates Schering Group paid to New York Medicaid for the Subject Drugs pursuant to the federal Medicaid Rebates statute, 42 U.S.C. §1396r-8, *et seq.*, would have been different had Schering Group reported, or First DataBank published, different AWP's for Schering Group's Subject Drugs.

45. Schering Group's knowledge of New York Medicaid's laws, regulations, and rules, including Schering Group's knowledge of New York Medicaid's formula and methodology concerning reimbursement of claims by providers for prescriptions drugs.

46. Schering Group's involvement in and/or knowledge of any civil settlements, criminal investigations, regulatory investigations or governmental investigations of any kind relating to the pricing, price reporting or marketing of Schering Group's prescription drugs, including, without limitation, Medicaid rebate or Best Price issues.

47. The existence, location, format, possession and substantive content of documents, databases, email servers, information systems, and other records containing information responsive to any of plaintiffs' requests for production of documents and/or other discovery requests.

48. Whether an index or other document exists (and the description and location of such document) that identifies the specific request(s) for production and the specific documents that respond to such requests.

49. Schering Group's total U.S. sales of prescription drugs for each year from and including 1997 through 2005.

50. Percentage of Schering Group's total sales of prescription drugs attributable to the Medicaid channel for each year from and including 1997 through 2005.

51. Schering Group's code of conduct and/or compliance policies relating in any manner to the sale, marketing and/or price reporting of prescription drugs.

52. Schering Group's knowledge of the 2003 OIG Guidance for Pharmaceutical Manufacturers.

53. Schering Group's document and data retention policies and practices for documents and data created or dated from 1997 through 2005, including all steps taken by Schering Group to preserve documents potentially relevant to any claim or defense in this lawsuit.

54. The factual basis of Schering Group's admissions and contentions in other legal actions since 1992 to which it has been a party which are contrary to its current position in this case that it has not made, marketed or sold any of the Subject Drugs (listed in Exhibit A attached hereto). This topic will address (by way of example, and not limitation) the admissions made in

Defendant's Answer to the Amended Master Consolidated Class Action Complaint, Modified Per the Court's Instruction at the November 21, 2003 Hearing, filed in AWP MDL No 1456 on April 9, 2004, at paragraph 3, that Schering Group "manufactures certain drugs" and "reports pricing information for their medicines to pharmaceutical pricing industry pricing publications."

55. What Schering Group (or anyone or any entity acting on Schering Group's behalf) has done to search for and produce information and documents responsive to plaintiffs' interrogatories, requests for production, requests for admission, and any other discovery requests, including the method, and scope of such search, any search terms employed, the identity of each person who participated in the search and production, and the general subject matters of the documents and information it has produced in this lawsuit to date. This topic is designed to obtain an understanding of the nature and sources of the hundreds of thousands of pages of documents and data produced in this lawsuit to date, to the extent that they have been produced by Schering Group, and is not calculated to subject the witness to a detailed examination on the particular substance of the documents or data themselves, except as they pertain directly to other topics in this notice.

Dated: March 1, 2010

**KIRBY McINERNEY LLP**

By: /s/ Joanne M. Cicala  
Joanne M. Cicala, Esq.  
James P. Carroll Jr., Esq.  
Kathryn B. Allen, Esq.  
Kirby McInerney LLP  
825 Third Avenue  
New York, New York 10022  
(212) 371-6600

*Counsel for Plaintiffs  
The City of New York, et al.*

## Exhibit A

1. All forms of Celestone Soluspan bearing an NDC, the first nine digits of which are 000850566;
2. All forms of Clarinex bearing an NDC, the first nine digits of which are 000851280;
3. All forms of Diprolene bearing an NDC, the first nine digits of which are 000850517;
4. All forms of Diprolene bearing an NDC, the first nine digits of which are 000850575;
5. All forms of Diprolene bearing an NDC, the first nine digits of which are 000850634;
6. All forms of Diprosone bearing an NDC, the first nine digits of which are 000850853;
7. All forms of Elocon bearing an NDC, the first nine digits of which are 000850370;
8. All forms of Elocon bearing an NDC, the first nine digits of which are 000850567;
9. All forms of Elocon bearing an NDC, the first nine digits of which are 000850854;
10. All forms of IMDUR bearing an NDC, the first nine digits of which are 000851153;
11. All forms of IMDUR bearing an NDC, the first nine digits of which are 000853306;
12. All forms of IMDUR bearing an NDC, the first nine digits of which are 000854110;
13. All forms of Intron A bearing an NDC, the first nine digits of which are 000850539;
14. All forms of Intron A bearing an NDC, the first nine digits of which are 000851110;
15. All forms of Intron A bearing an NDC, the first nine digits of which are 000851133;
16. All forms of Intron A bearing an NDC, the first nine digits of which are 000851168;
17. All forms of Intron A bearing an NDC, the first nine digits of which are 000851179;
18. All forms of Intron A bearing an NDC, the first nine digits of which are 000851235;
19. All forms of Intron A bearing an NDC, the first nine digits of which are 000851254;
20. All forms of K-Dur bearing an NDC, the first nine digits of which are 000850787;
21. All forms of Lotrimin bearing an NDC, the first nine digits of which are 000850613;
22. All forms of Lotrisone bearing an NDC, the first nine digits of which are 000850809;
23. All forms of Nitro-Dur bearing an NDC, the first nine digits of which are 000850819;
24. All forms of Nitro-Dur bearing an NDC, the first nine digits of which are 000853305;
25. All forms of Nitro-Dur bearing an NDC, the first nine digits of which are 000853310;
26. All forms of Nitro-Dur bearing an NDC, the first nine digits of which are 000853315;
27. All forms of Nitro-Dur bearing an NDC, the first nine digits of which are 000853320;
28. All forms of Nitro-Dur bearing an NDC, the first nine digits of which are 000853330;
29. All forms of Normodyne bearing an NDC, the first nine digits of which are 000850244;
30. All forms of Normodyne bearing an NDC, the first nine digits of which are 000850362;
31. All forms of Normodyne bearing an NDC, the first nine digits of which are 000850752;
32. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851279;

33. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851291;
34. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851297;
35. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851304;
36. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851316;
37. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851323;
38. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851368;
39. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851370;
40. All forms of Proventil bearing an NDC, the first nine digits of which are 000850208;
41. All forms of Proventil bearing an NDC, the first nine digits of which are 000850209;
42. All forms of Proventil bearing an NDC, the first nine digits of which are 000850315;
43. All forms of Proventil bearing an NDC, the first nine digits of which are 000850614;
44. All forms of Proventil bearing an NDC, the first nine digits of which are 000851132;
45. All forms of Rebetol bearing an NDC, the first nine digits of which are 000851194;
46. All forms of Rebetol bearing an NDC, the first nine digits of which are 000851327;
47. All forms of Rebetol bearing an NDC, the first nine digits of which are 000851351;
48. All forms of Rebetol bearing an NDC, the first nine digits of which are 000851385;
49. All forms of Rebetrone bearing an NDC, the first nine digits of which are 000851258;
50. All forms of Temodar bearing an NDC, the first nine digits of which are 000851244;
51. All forms of Temodar bearing an NDC, the first nine digits of which are 000851248;
52. All forms of Temodar bearing an NDC, the first nine digits of which are 000851252;
53. All forms of Temodar bearing an NDC, the first nine digits of which are 000851259;
54. All forms of Theo-Dur bearing an NDC, the first nine digits of which are 000850487;
55. All forms of Theo-Dur bearing an NDC, the first nine digits of which are 000850584;
56. All forms of Theo-Dur bearing an NDC, the first nine digits of which are 000850806;
57. All forms of Theo-Dur bearing an NDC, the first nine digits of which are 000850933;
58. All forms of Trilafon bearing an NDC, the first nine digits of which are 000850012;
59. All forms of Vancenase bearing an NDC, the first nine digits of which are 000850649; and
60. All forms of Vanceril bearing an NDC, the first nine digits of which are 000850736.

**CERTIFICATE OF SERVICE**

I, James Carroll, hereby certify that I caused a true and correct copy of the foregoing to be served upon all counsel of record via electronic service, pursuant to Case Management Order No. 2, by sending a copy to LexisNexis File & Serve for posting to all parties.

Dated: March 1, 2010

/s/ James Carroll  
KIRBY McINERNEY LLP



**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	) ) MDL No. 1456 ) Master File No. 01-12257-PBS ) Subcategory Case No. 03-10643-PBS )
THIS DOCUMENT RELATES TO:	)
<i>The City of New York, et al.</i>	) Judge Patti B. Saris )
v.	) Magistrate Judge Marianne Bowler )
<i>Abbott Laboratories, et al.</i>	) )

**PLAINTIFFS' REVISED NOTICE OF 30(b)(6) DEPOSITION OF  
SCHERING-PLOUGH CORPORATION, SCHERING CORPORATION, AND  
WARRICK PHARMACEUTICALS CORPORATION (TRANSACTIONAL DATA)**

PLEASE TAKE NOTICE that, pursuant to Rules 26 and 30 of the Federal Rules of Civil Procedure, plaintiffs, The City of New York, et al., will take the deposition, by oral examination, of a representative of Schering-Plough Corporation, Schering Corporation, and Warrick Pharmaceuticals Corporation (hereinafter "Schering Group") for purposes of the above-captioned action. The deposition shall commence at **9:30 a.m. EST, Thursday, March 18, 2010**, continuing day to day until completed, at a mutually agreeable location in either New York or New Jersey.

This deposition will take place before a notary public, or any other officer authorized to administer oaths, and will be recorded by stenographic and visual means. The deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure.

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by the topics identified in this Notice of Deposition is 1997 through 2005. To the extent they are relevant, this notice incorporates by reference the definitions and rules of construction delineated in plaintiffs' First Request for Production of Documents to All Defendants, dated October 18, 2007.

Schering Group shall designate one or more officers, directors, managing agents or other representatives to testify on the behalf of Schering Group, and may set forth, for each representative, the matters to which that representative will testify. The representative(s) shall testify under oath about the following topics:

1. Describe Schering Group's database(s) and/or any other form of data storage which contain information concerning sales transactions, contract pricing, direct pricing, net pricing, AWP pricing, WAC pricing, discounts, commercial rebates, chargebacks and/or other price concessions and/or monetary incentives of any nature relating to the Subject Drugs.

2. Describe Schering Group's posting and/or recording in its records the contract prices, net prices, discounts, chargebacks, rebates (commercial) and/or other price concessions relating to its sale of the Subject Drugs.

3. Describe the flow of transactional information from the point of intake through the business divisions within Schering Group that have access to transactional data and/or transactional information and/or any other related or derived information.

4. Describe Schering Group's classes of trade and the coding used to denote those classes.

5. Describe the system(s) used for contract administration. The witness will also describe the database(s) and/or any other form of data storage that contain prices charged to any



customers including (1) contract customers; (2) non-contract customers; (3) direct customers; and (3) indirect customers.

6. Describe Schering Group's system(s), database(s) and/or any other form of data storage that contain historical price information for contracting customers, non-contracting customers, classes of trade, or other groups or tiers of customers, including the fields maintained, coding that is used in the fields, and the data populating the fields.

7. Describe Schering Group's database(s) and/or any other form of data storage that contain chargebacks. The witness will describe how chargebacks are estimated, accrued and processed, including the fields that are populated and the coding used in those fields. The witness will describe how chargeback estimation is calibrated.

8. Describe Schering Group's database(s) and/or any other form of data storage that contain discounts, rebates, chargebacks, credits, inventory management agreements, and/or any other form of price reductions relating to the Subject Drugs. The witness will also describe which business divisions generate, enter, and/or use discount information, including the application of discount information to calculations used by Schering Group to determine net revenues for specific products or product groups.

9. Describe all other amounts and/or adjustments that might be added to or subtracted from the product price, whether such adjustments are made at the NDC, product group, or other level. The witness will explain whether these adjustments are made at the transaction level, and/or applied to a group of transactions, and/or applied in any other manner.

10. Describe the system(s) used to calculate prices reported to the Centers for Medicare and Medicaid Services (formerly, Health Care Financing Administration) during the

period 1997 through 2005, including the location and description of the information and the business division using the system.

11. Describe the database(s) and/or any other form of data storage used by Schering Group that contain prices reported to third-party price reporting services, including, but not limited to, First DataBank.

12. Describe how the fields presented in the transactional data, produced by Schering Group to plaintiffs on March 26, 2006, were selected from the complete set of fields available in the original database(s).

13. The existence, location, possession and substantive content of all transactional data, stored in any form including electronic and paper documents, which are responsive to any of plaintiffs' previously served requests for production.

14. Schering Group's document and data retention policies for transactional data created or dated from and including 1997 through 2005.

Dated: March 1, 2010

**KIRBY McINERNEY LLP**

By: /s/ Joanne M. Cicala  
Joanne M. Cicala, Esq.  
James P. Carroll Jr., Esq.  
Kathryn B. Allen, Esq.  
Kirby McInerney LLP  
825 Third Avenue  
New York, New York 10022  
(212) 371-6600

*Counsel for Plaintiffs  
The City of New York, et al.*

## Exhibit A

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6. All forms of Diprosone bearing an NDC, the first nine digits of which are 000850853;
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10. All forms of IMDUR bearing an NDC, the first nine digits of which are 000851153;
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13. All forms of Intron A bearing an NDC, the first nine digits of which are 000850539;
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15. All forms of Intron A bearing an NDC, the first nine digits of which are 000851133;
16. All forms of Intron A bearing an NDC, the first nine digits of which are 000851168;
17. All forms of Intron A bearing an NDC, the first nine digits of which are 000851179;
18. All forms of Intron A bearing an NDC, the first nine digits of which are 000851235;
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20. All forms of K-Dur bearing an NDC, the first nine digits of which are 000850787;
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24. All forms of Nitro-Dur bearing an NDC, the first nine digits of which are 000853305;
25. All forms of Nitro-Dur bearing an NDC, the first nine digits of which are 000853310;
26. All forms of Nitro-Dur bearing an NDC, the first nine digits of which are 000853315;
27. All forms of Nitro-Dur bearing an NDC, the first nine digits of which are 000853320;
28. All forms of Nitro-Dur bearing an NDC, the first nine digits of which are 000853330;
29. All forms of Normodyne bearing an NDC, the first nine digits of which are 000850244;
30. All forms of Normodyne bearing an NDC, the first nine digits of which are 000850362;
31. All forms of Normodyne bearing an NDC, the first nine digits of which are 000850752;
32. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851279;

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34. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851297;
35. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851304;
36. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851316;
37. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851323;
38. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851368;
39. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851370;
40. All forms of Proventil bearing an NDC, the first nine digits of which are 000850208;
41. All forms of Proventil bearing an NDC, the first nine digits of which are 000850209;
42. All forms of Proventil bearing an NDC, the first nine digits of which are 000850315;
43. All forms of Proventil bearing an NDC, the first nine digits of which are 000850614;
44. All forms of Proventil bearing an NDC, the first nine digits of which are 000851132;
45. All forms of Rebetol bearing an NDC, the first nine digits of which are 000851194;
46. All forms of Rebetol bearing an NDC, the first nine digits of which are 000851327;
47. All forms of Rebetol bearing an NDC, the first nine digits of which are 000851351;
48. All forms of Rebetol bearing an NDC, the first nine digits of which are 000851385;
49. All forms of Rebetrone bearing an NDC, the first nine digits of which are 000851258;
50. All forms of Temodar bearing an NDC, the first nine digits of which are 000851244;
51. All forms of Temodar bearing an NDC, the first nine digits of which are 000851248;
52. All forms of Temodar bearing an NDC, the first nine digits of which are 000851252;
53. All forms of Temodar bearing an NDC, the first nine digits of which are 000851259;
54. All forms of Theo-Dur bearing an NDC, the first nine digits of which are 000850487;
55. All forms of Theo-Dur bearing an NDC, the first nine digits of which are 000850584;
56. All forms of Theo-Dur bearing an NDC, the first nine digits of which are 000850806;
57. All forms of Theo-Dur bearing an NDC, the first nine digits of which are 000850933;
58. All forms of Trilafon bearing an NDC, the first nine digits of which are 000850012;
59. All forms of Vancenase bearing an NDC, the first nine digits of which are 000850649; and
60. All forms of Vanceril bearing an NDC, the first nine digits of which are 000850736.

**CERTIFICATE OF SERVICE**

I, James Carroll, hereby certify that I caused a true and correct copy of the foregoing to be served upon all counsel of record via electronic service, pursuant to Case Management Order No. 2, by sending a copy to LexisNexis File & Serve for posting to all parties.

Dated: March 1, 2010

/s/ James Carroll  
KIRBY McINERNEY LLP



**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESAL PRICE LITIGATION	) ) MDL No. 1456 ) Master File No. 01-12257-PBS ) Subcategory Case No. 07-12141-PBS )
THIS DOCUMENT RELATES TO:	) ) Judge Patti B. Saris )
<i>State of Iowa</i>	) )
v.	)
<i>Abbott Laboratories, et al.</i>	) )

**STATE OF IOWA'S NOTICE OF 30(b)(6) DEPOSITION OF  
SCHERING-PLOUGH CORPORATION, SCHERING CORPORATION, AND  
WARRICK PHARMACEUTICALS CORPORATION**

PLEASE TAKE NOTICE that, pursuant to Rules 26 and 30 of the Federal Rules of Civil Procedure, plaintiff, State of Iowa, will take the deposition, by oral examination, of a representative of Schering-Plough Corporation, Schering Corporation, and Warrick Pharmaceuticals Corporation (hereinafter "Schering Group") for purposes of the above-captioned action. The deposition shall commence at **9:30 a.m. EST, Tuesday, March 16, 2010**, continuing day to day until completed, at a mutually agreeable location in either New York or New Jersey.

This deposition will take place before a notary public, or any other officer authorized to administer oaths, and will be recorded by stenographic and visual means. The deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure.

As used herein, the term "At-Issue NDCs" refers to Schering Group drugs and NDCs identified in Exhibit A attached hereto. Pursuant to Iowa CMO, dated January 22, 2009, the time

period covered by the topics identified in this Notice of Deposition is 1992 through 2005. To the extent they are relevant, this notice incorporates by reference the definitions and rules of construction listed in plaintiff's Second Set of Interrogatories and Second Set of Requests for Production of Documents to All Defendants, dated March 1, 2010.

Schering Group shall designate one or more officers, directors, managing agents or other representatives to testify on the behalf of Schering Group, and may set forth, for each representative, the matters to which that representative will testify. The representative(s) shall testify under oath about the following topics:

1. Schering Group's sales and/or joint venturing of the At-Issue NDCs, including but not limited to, sales strategies, sales staff training, sales meetings, competitive sales research, sales staff evaluations, and sales forecasts relating to the At-Issue NDCs.

2. Schering Group's marketing and/or joint venturing of the At-Issue NDCs, including but not limited to, marketing decisions, plans, and strategies, market share research, product launches, and advertising relating to the At-Issue NDCs

3. Schering Group's pricing decisions, pricing strategies, and pricing recommendations, including but not limited to, decisions, strategies, and recommendations regarding the price discounts, rebates, chargebacks, credits, inventory management agreements, and other forms of price reductions relating to the At-Issue NDCs.

4. Identification and description of all contract prices, net prices, direct prices, discounts, rebates (commercial), chargebacks and other price concessions offered by Schering Group with respect to the sale of the At-Issue NDCs.

5. The drugs on the At-Issue NDCs list, which were subject to contract pricing.

6. Schering Group's contract prices and/or direct prices with wholesalers, retailers, physicians, clinics, outpatient pharmacies and/or buying groups for the At-Issue NDCs.

7. Identification of Schering Group's customers who purchase or distribute the At-Issue NDCs, from and including 1992 through 2005, including, without limitation, wholesalers, specialty or general distributors, retailers (including but not limited to retail chains, Staff Model HMO pharmacies, PBM mail order and other mail order pharmacies), GPO's and direct purchasers.

8. Schering Group's databases which contain information concerning sales transactions, contract pricing, direct pricing, net pricing, AWP pricing, WAC pricing, discounts, commercial rebates, chargebacks and/or other price concessions and/or monetary incentives of any nature relating to the At-Issue NDCs.

9. Schering Group's setting of AWP, recommended/suggested AWP, and/or WAC prices for the At-Issue NDCs, and the reasons for setting those prices.

10. Schering Group's posting and/or recording in its records the contract prices, net prices, discounts, chargebacks, rebates (commercial) and/or other price concessions relating to its sale of the At-Issue NDCs.

11. Any communications regarding the At-Issue NDCs occurring between Schering Group and First DataBank, Red Book and/or Medispan (collectively the "Price Reporting Services"), including but not limited to price reporting, price verifications, price confirmations, and/or price approvals for any pricing information including, but not limited to, AWP, SWP, WAC or any WAC equivalent, and/or DP (collectively "Any Pricing Information") that Schering Group provided to the Price Reporting Services, and Schering Group's definitions of these pricing terms.



12. Schering Group's definitions for Any Pricing Information including, but not limited to, AWP, SWP, WAC or any WAC equivalent, and/or DP, and the identification of any documents relating thereto.

13. Schering Group's reason(s) for providing the Price Reporting Services Any Pricing Information including, but not limited to, AWP, SWP, WAC or any WAC equivalent, and/or DP.

14. Schering Group's knowledge of the relationship between Any Pricing Information that Schering Group provided to the Price Reporting Services, and any such information published by the Price Reporting Services for the At-Issue NDCs.

15. Schering Group's knowledge or understanding of how the Price Reporting Services used Any Pricing Information supplied by Schering Group including, but not limited to the transmission of that information to Iowa State Medicaid.

16. The action(s), if any, taken by Schering Group to stop, object to, or otherwise oppose the publication of the WAC or AWP by the Price Reporting Services for any of the At-Issue NDCs and the reason(s) for any such action.

17. Schering Group's communications with customers defining or explaining the meaning or components of its various Pricing Information for prescription drugs.

18. Schering Group's knowledge of wholesaler markups regarding the sale of Schering Group's prescription drugs.

19. Whether Schering Group ever had the ability to determine the actual AWP for its drugs (i.e., the actual average prices charged by wholesalers to their customers for Schering Group's drugs), and, if so, whether Schering Group in fact determined such actual AWP's for its drugs.

20. Schering Group's knowledge, whether direct or indirect, of the net prices paid by Medicaid healthcare providers to wholesalers, distributors, or to Schering Group directly for the At-Issue NDCs, from and including 1992 through 2005.

21. Whether Schering Group ever communicated to the Price Reporting Services that the AWP that Schering Group provided to these entities was neither a price that was actually an average of wholesale prices, nor a price that was actually paid by retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health-care entities, or doctors for the At-Issue NDCs, and, if so, when such communications took place and of what such communications consisted.

22. Whether Schering Group ever communicated to anyone in Iowa State Medicaid that the AWP that Schering Group provided to the Price Reporting Services was neither a price that was actually an average of wholesale prices, nor a price that was actually paid by retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health-care entities, or doctors for the At-Issue NDCs, and, if so, when such communications took place and of what such communications consisted.

23. Whether Schering Group ever communicated to the Price Reporting Services that the WAC that Schering Group provided to these entities was not the net price actually paid by wholesalers to Schering Group for the At-Issue NDCs, and, if so, when such communications took place and of what such communications consisted.

24. Whether Schering Group ever communicated to Iowa State Medicaid that the WAC that Schering Group provided to the Price Reporting Services was not the net price actually paid by wholesalers to Schering Group for the At-Issue NDCs, and, if so, when such communications took place and of what such communications consisted.

25. Schering Group's communications and correspondence with Iowa State Medicaid from and including 1992 through 2005.

26. Whether Schering Group ever provided Any Pricing Information and/or average manufacturer's price (hereinafter "AMP") to Iowa State Medicaid (apart from providing such information pursuant to plaintiff's discovery requests in this case).

27. Schering Group's understanding and belief regarding the confidentiality provisions of the Medicaid Rebate statute, 42 U.S.C. §1396r-8, as it pertains to AMP.

28. Whether Schering Group contends that Iowa State Medicaid were not prohibited by federal law from determining, and could have determined, the AMPs of the At-Issue NDCs based on the Unit Rebate Amount for such drugs provided to the State by the federal government pursuant to the Medicaid Rebate statute, 42 U.S.C. §1396r-8, *et seq.*, and if so, all bases for such contention.

29. Schering Group's methodologies for calculating AMP for its products sold during the period 1992 through 2005, including knowledge of the data and accounting methods used.

30. Schering Group's policies and practices concerning the disclosures that providers (retail and chain pharmacies, long-term care pharmacies, mail-order pharmacies, home health-care entities, doctors, hospitals, clinics), wholesalers, and pharmacy benefit managers may make of Any Pricing Information they receive from Schering Group for the At-Issue NDCs.

31. Schering Group's knowledge of whether First DataBank increased the AWP's for the At-Issue NDCs from WAC+20% to WAC+25% in or around 2001-2002 and the action(s), if any, taken by Schering Group in response including, but not limited to, any studies, analyses or white papers regarding this issue.

32. To the extent Schering Group stopped providing Any Pricing Information to the Price Reporting Services for any of the At-Issue NDCs, identify such information and provide the reason(s) for doing so.

33. The information and/or data that Schering Group has purchased, licensed, subscribed to, obtained, and/or reviewed from the Compendia or IMS relating to the At-Issue NDCs, including but not limited to pricing, market share, and services.

34. Schering Group's knowledge of the relationship between the pricing information including, but not limited to, AWP, recommended/suggested AWP, SWP, WAC or any WAC equivalent, and/or DP

35. The corporate history and organizational structure of Schering Group, including any current and/or former parent companies to Schering Group, any joint ventures involving Schering Group, any predecessor entities of Schering Group, and any subsidiaries held by Schering Group at any time.

36. The formal corporate relationship between Schering-Plough Corporation and each of its subsidiaries Schering Corporation and Warrick Pharmaceuticals Corporation.

37. The day-to-day reporting and approval relationships between each of the companies listed in paragraph 36.

38. The Board of Directors of each of the companies listed in paragraph 36.

39. The types of documents regularly exchanged between each of the companies listed in paragraph 36.

40. The existence of documents reflecting or evidencing any policies or practices regarding Schering-Plough Corporation's (or its employees') approval of, or contribution to, pricing actions (including the setting of prices of whatsoever kind or the publication thereof)

taken by Schering-Plough Corporation's subsidiaries Schering Corporation and/or Warrick Pharmaceuticals Corporation.

41. A description of which company pays the salary, bonuses, options, and/or any other forms of remuneration to the companies listed in paragraph 36.

42. Direct communications between Schering Group (or Schering Group's counsel or representatives) and the State of Iowa, Iowa State Medicaid, and/or counsel for plaintiff, including the Iowa Department of Justice Office of the Attorney General.

43. Whether Schering Group contends that any damages claimed by the State of Iowa should be offset by the rebates paid by Schering Group to Iowa State Medicaid under the federal Medicaid Rebates statute, 42 U.S.C. §1396r-8, *et seq.*, and, if so, the bases for such contention and the information or documents that support such contention.

44. Schering Group's knowledge, belief, and/or understanding as to whether the rebates Schering Group paid to Iowa State Medicaid's for the At-Issue NDCs pursuant to the federal Medicaid Rebates statute, 42 U.S.C. §1396r-8, *et seq.*, would have been different had Schering Group reported, or First DataBank published, different AWP's for Schering Group's At-Issue NDCs.

45. Schering Group's knowledge of Iowa State Medicaid's laws, regulations, and rules, including Schering Group's knowledge of Iowa State Medicaid's formula and methodology concerning reimbursement of claims by providers for prescriptions drugs.

46. Schering Group's involvement in and/or knowledge of any civil settlements, criminal investigations, regulatory investigations or governmental investigations of any kind relating to the pricing, price reporting or marketing of Schering Group's prescription drugs, including, without limitation, Medicaid rebate or Best Price issues.

47. The existence, location, format, possession and substantive content of documents, databases, email servers, information systems, and other records containing information responsive to any of plaintiff's requests for production of documents and/or other discovery requests.

48. Whether an index or other document exists (and the description and location of such document) that identifies the specific request(s) for production and the specific documents that respond to such requests.

49. Schering Group's total U.S. sales of prescription drugs for each year from and including 1992 through 2005.

50. Percentage of Schering Group's total sales of prescription drugs attributable to the Medicaid channel for each year from and including 1992 through 2005.

51. Schering Group's code of conduct and/or compliance policies relating in any manner to the sale, marketing and/or price reporting of prescription drugs.

52. Schering Group's knowledge of the 2003 OIG Guidance for Pharmaceutical Manufacturers.

53. Schering Group's document and data retention policies and practices for documents and data created or dated from 1992 through 2005, including all steps taken by Schering Group to preserve documents potentially relevant to any claim or defense in this lawsuit.

54. The factual basis of Schering Group's admissions and contentions in other legal actions since 1992 to which it has been a party which are contrary to its current position in this case that it has not made, marketed or sold any of the Subject Drugs (listed in Exhibit A attached hereto). This topic will address (by way of example, and not limitation) the admissions made in

Defendant's Answer to the Amended Master Consolidated Class Action Complaint, Modified Per the Court's Instruction at the November 21, 2003 Hearing, filed in AWP MDL No 1456 on April 9, 2004, at paragraph 3, that Schering Group "manufactures certain drugs" and "reports pricing information for their medicines to pharmaceutical pricing industry pricing publications."

55. What Schering Group (or anyone or any entity acting on Schering Group's behalf) has done to search for and produce information and documents responsive to plaintiff's interrogatories, requests for production, requests for admission, and any other discovery requests, including the method, and scope of such search, any search terms employed, the identity of each person who participated in the search and production, and the general subject matters of the documents and information it has produced in this lawsuit to date. This topic is designed to obtain an understanding of the nature and sources of the hundreds of thousands of pages of documents and data produced in this lawsuit to date, to the extent that they have been produced by Schering Group, and is not calculated to subject the witness to a detailed examination on the particular substance of the documents or data themselves, except as they pertain directly to other topics in this notice.

Dated: March 2, 2010

**KIRBY McINERNEY LLP**

By: /s/ Joanne M. Cicala  
Joanne M. Cicala, Esq.  
James P. Carroll Jr., Esq.  
Kathryn B. Allen, Esq.  
825 Third Avenue  
New York, New York 10022  
(212) 371-6600

*Counsel for the State of Iowa*

## Exhibit A

1. All forms of Celestone Soluspan bearing an NDC, the first nine digits of which are 000850566;
2. All forms of Clarinex bearing an NDC, the first nine digits of which are 000851280;
3. All forms of Diprolene bearing an NDC, the first nine digits of which are 000850517;
4. All forms of Diprolene bearing an NDC, the first nine digits of which are 000850575;
5. All forms of Diprolene bearing an NDC, the first nine digits of which are 000850634;
6. All forms of Elocon bearing an NDC, the first nine digits of which are 000850370;
7. All forms of Elocon bearing an NDC, the first nine digits of which are 000850567;
8. All forms of Elocon bearing an NDC, the first nine digits of which are 000850854;
9. All forms of IMDUR bearing an NDC, the first nine digits of which are 000851153;
10. All forms of IMDUR bearing an NDC, the first nine digits of which are 000853306;
11. All forms of IMDUR bearing an NDC, the first nine digits of which are 000854110;
12. All forms of Intron A bearing an NDC, the first nine digits of which are 000850539;
13. All forms of Intron A bearing an NDC, the first nine digits of which are 000851110;
14. All forms of Intron A bearing an NDC, the first nine digits of which are 000851133;
15. All forms of Intron A bearing an NDC, the first nine digits of which are 000851168;
16. All forms of Intron A bearing an NDC, the first nine digits of which are 000851179;
17. All forms of Intron A bearing an NDC, the first nine digits of which are 000851235;
18. All forms of Intron A bearing an NDC, the first nine digits of which are 000851254;
19. All forms of K-Dur bearing an NDC, the first nine digits of which are 000850787;
20. All forms of Lotrisone bearing an NDC, the first nine digits of which are 000850809;
21. All forms of Nitro-Dur bearing an NDC, the first nine digits of which are 000850819;
22. All forms of Nitro-Dur bearing an NDC, the first nine digits of which are 000853305;
23. All forms of Nitro-Dur bearing an NDC, the first nine digits of which are 000853310;
24. All forms of Nitro-Dur bearing an NDC, the first nine digits of which are 000853315;
25. All forms of Nitro-Dur bearing an NDC, the first nine digits of which are 000853320;
26. All forms of Nitro-Dur bearing an NDC, the first nine digits of which are 000853330;
27. All forms of Normodyne bearing an NDC, the first nine digits of which are 000850244;
28. All forms of Normodyne bearing an NDC, the first nine digits of which are 000850362;
29. All forms of Normodyne bearing an NDC, the first nine digits of which are 000850752;
30. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851279;
31. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851291;
32. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851297;



33. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851304;
34. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851316;
35. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851323;
36. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851368;
37. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851370;
38. All forms of Proventil bearing an NDC, the first nine digits of which are 000850208;
39. All forms of Proventil bearing an NDC, the first nine digits of which are 000850209;
40. All forms of Proventil bearing an NDC, the first nine digits of which are 000850315;
41. All forms of Proventil bearing an NDC, the first nine digits of which are 000850614;
42. All forms of Proventil bearing an NDC, the first nine digits of which are 000851132;
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45. All forms of Rebetol bearing an NDC, the first nine digits of which are 000851351;
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50. All forms of Temodar bearing an NDC, the first nine digits of which are 000851252;
51. All forms of Temodar bearing an NDC, the first nine digits of which are 000851259; and
52. All forms of Vanceril bearing an NDC, the first nine digits of which are 000850736.

**CERTIFICATE OF SERVICE**

I, James Carroll, hereby certify that I caused a true and correct copy of the foregoing to be served upon all counsel of record via electronic service, pursuant to Case Management Order No. 2, by sending a copy to LexisNexis File & Serve for posting to all parties.

Dated: March 2, 2010

/s/ James Carroll  
KIRBY McINERNEY LLP



**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESAL PRICE LITIGATION	) ) MDL No. 1456 ) Master File No. 01-12257-PBS ) Subcategory Case No. 07-12141-PBS )
THIS DOCUMENT RELATES TO:	)
<i>State of Iowa</i>	) Judge Patti B. Saris )
v.	) Magistrate Judge Marianne Bowler )
<i>Abbott Laboratories, et al.</i>	) )

**STATE OF IOWA'S REVISED NOTICE OF 30(b)(6) DEPOSITION OF  
SCHERING-PLOUGH CORPORATION, SCHERING CORPORATION, AND  
WARRICK PHARMACEUTICALS CORPORATION (TRANSACTIONAL DATA)**

PLEASE TAKE NOTICE that, pursuant to Rules 26 and 30 of the Federal Rules of Civil Procedure, plaintiff, State of Iowa, will take the deposition, by oral examination, of a representative of Schering-Plough Corporation, Schering Corporation, and Warrick Pharmaceuticals Corporation (hereinafter "Schering Group") for purposes of the above-captioned action. The deposition shall commence at **9:30 a.m. EST, Thursday, March 18, 2010**, continuing day to day until completed, at a mutually agreeable location in either New York or New Jersey.

This deposition will take place before a notary public, or any other officer authorized to administer oaths, and will be recorded by stenographic and visual means. The deposition is being taken for the purposes of discovery, for use at trial, and for such other purposes as permitted under the Federal Rules of Civil Procedure.

As used herein, the term "At-Issue NDCs" refers to Schering Group drugs and NDCs identified in Exhibit A attached hereto. Pursuant to Iowa CMO, dated January 22, 2009, the time

period covered by the topics identified in this Notice of Deposition is 1992 through 2005. To the extent they are relevant, this notice incorporates by reference the definitions and rules of construction listed in plaintiff's Second Set of Interrogatories and Second Set of Requests for Production of Documents to All Defendants, dated March 1, 2010.

Schering Group shall designate one or more officers, directors, managing agents or other representatives to testify on the behalf of Schering Group, and may set forth, for each representative, the matters to which that representative will testify. The representative(s) shall testify under oath about the following topics:

1. Describe Schering Group's database(s) and/or any other form of data storage which contain information concerning sales transactions, contract pricing, direct pricing, net pricing, AWP pricing, WAC pricing, discounts, commercial rebates, chargebacks and/or other price concessions and/or monetary incentives of any nature relating to the At-Issue NDCs.

2. Describe Schering Group's posting and/or recording in its records the contract prices, net prices, discounts, chargebacks, rebates (commercial) and/or other price concessions relating to its sale of the At-Issue NDCs.

3. Describe the flow of transactional information from the point of intake through the business divisions within Schering Group that have access to transactional data and/or transactional information and/or any other related or derived information.

4. Describe Schering Group's classes of trade and the coding used to denote those classes.

5. Describe the system(s) used for contract administration. The witness will also describe the database(s) and/or any other form of data storage that contain prices charged to any

customers including (1) contract customers; (2) non-contract customers; (3) direct customers; and (3) indirect customers.

6. Describe Schering Group's system(s), database(s) and/or any other form of data storage that contain historical price information for contracting customers, non-contracting customers, classes of trade, or other groups or tiers of customers, including the fields maintained, coding that is used in the fields, and the data populating the fields.

7. Describe Schering Group's database(s) and/or any other form of data storage that contain chargebacks. The witness will describe how chargebacks are estimated, accrued and processed, including the fields that are populated and the coding used in those fields. The witness will describe how chargeback estimation is calibrated.

8. Describe Schering Group's database(s) and/or any other form of data storage that contain discounts, rebates, chargebacks, credits, inventory management agreements, and/or any other form of price reductions relating to the At-Issue NDCs. The witness will also describe which business divisions generate, enter, and/or use discount information, including the application of discount information to calculations used by Schering Group to determine net revenues for specific products or product groups.

9. Describe all other amounts and/or adjustments that might be added to or subtracted from the product price, whether such adjustments are made at the NDC, product group, or other level. The witness will explain whether these adjustments are made at the transaction level, and/or applied to a group of transactions, and/or applied in any other manner.

10. Describe the system(s) used to calculate prices reported to the Centers for Medicare and Medicaid Services (formerly, Health Care Financing Administration) during the

period 1992 through 2005, including the location and description of the information and the business division using the system.

11. Describe the database(s) and/or any other form of data storage used by Schering Group that contain prices reported to third-party price reporting services, including, but not limited to, First DataBank.

12. Describe how the fields presented in the transactional data, produced by Schering Group to plaintiff, were selected from the complete set of fields available in the original database(s).

13. The existence, location, possession and substantive content of all transactional data, stored in any form including electronic and paper documents, which are responsive to any of plaintiff's previously served requests for production.

14. Schering Group's document and data retention policies for transactional data created or dated from and including 1992 through 2005.

Dated: March 2, 2010

**KIRBY McINERNEY LLP**

By: /s/ Joanne M. Cicala  
Joanne M. Cicala, Esq.  
James P. Carroll Jr., Esq.  
Kathryn B. Allen, Esq.  
825 Third Avenue  
New York, New York 10022  
(212) 371-6600

*Counsel for the State of Iowa*

## Exhibit A

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4. All forms of Diprolene bearing an NDC, the first nine digits of which are 000850575;
5. All forms of Diprolene bearing an NDC, the first nine digits of which are 000850634;
6. All forms of Elocon bearing an NDC, the first nine digits of which are 000850370;
7. All forms of Elocon bearing an NDC, the first nine digits of which are 000850567;
8. All forms of Elocon bearing an NDC, the first nine digits of which are 000850854;
9. All forms of IMDUR bearing an NDC, the first nine digits of which are 000851153;
10. All forms of IMDUR bearing an NDC, the first nine digits of which are 000853306;
11. All forms of IMDUR bearing an NDC, the first nine digits of which are 000854110;
12. All forms of Intron A bearing an NDC, the first nine digits of which are 000850539;
13. All forms of Intron A bearing an NDC, the first nine digits of which are 000851110;
14. All forms of Intron A bearing an NDC, the first nine digits of which are 000851133;
15. All forms of Intron A bearing an NDC, the first nine digits of which are 000851168;
16. All forms of Intron A bearing an NDC, the first nine digits of which are 000851179;
17. All forms of Intron A bearing an NDC, the first nine digits of which are 000851235;
18. All forms of Intron A bearing an NDC, the first nine digits of which are 000851254;
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22. All forms of Nitro-Dur bearing an NDC, the first nine digits of which are 000853305;
23. All forms of Nitro-Dur bearing an NDC, the first nine digits of which are 000853310;
24. All forms of Nitro-Dur bearing an NDC, the first nine digits of which are 000853315;
25. All forms of Nitro-Dur bearing an NDC, the first nine digits of which are 000853320;
26. All forms of Nitro-Dur bearing an NDC, the first nine digits of which are 000853330;
27. All forms of Normodyne bearing an NDC, the first nine digits of which are 000850244;
28. All forms of Normodyne bearing an NDC, the first nine digits of which are 000850362;
29. All forms of Normodyne bearing an NDC, the first nine digits of which are 000850752;
30. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851279;
31. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851291;
32. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851297;

33. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851304;
34. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851316;
35. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851323;
36. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851368;
37. All forms of Peg-Intron bearing an NDC, the first nine digits of which are 000851370;
38. All forms of Proventil bearing an NDC, the first nine digits of which are 000850208;
39. All forms of Proventil bearing an NDC, the first nine digits of which are 000850209;
40. All forms of Proventil bearing an NDC, the first nine digits of which are 000850315;
41. All forms of Proventil bearing an NDC, the first nine digits of which are 000850614;
42. All forms of Proventil bearing an NDC, the first nine digits of which are 000851132;
43. All forms of Rebetol bearing an NDC, the first nine digits of which are 000851194;
44. All forms of Rebetol bearing an NDC, the first nine digits of which are 000851327;
45. All forms of Rebetol bearing an NDC, the first nine digits of which are 000851351;
46. All forms of Rebetol bearing an NDC, the first nine digits of which are 000851385;
47. All forms of Rebetrone bearing an NDC, the first nine digits of which are 000851258;
48. All forms of Temodar bearing an NDC, the first nine digits of which are 000851244;
49. All forms of Temodar bearing an NDC, the first nine digits of which are 000851248;
50. All forms of Temodar bearing an NDC, the first nine digits of which are 000851252;
51. All forms of Temodar bearing an NDC, the first nine digits of which are 000851259; and
52. All forms of Vanceril bearing an NDC, the first nine digits of which are 000850736.



**CERTIFICATE OF SERVICE**

I, James Carroll, hereby certify that I caused a true and correct copy of the foregoing to be served upon all counsel of record via electronic service, pursuant to Case Management Order No. 2, by sending a copy to LexisNexis File & Serve for posting to all parties.

Dated: March 2, 2010

/s/ James Carroll  
KIRBY McINERNEY LLP

# EXHIBIT B

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESAL PRICE  
LITIGATION

THIS DOCUMENT RELATES TO:

City of New York et al v. Abbott  
Laboratories, et al.  
Civ. Action No. 04-cv-06054, et al.

MDL NO. 1456  
CIVIL ACTION NO.  
01-12257-PBS

## ORDER

September 22, 2008

Saris, U.S.D.J.

The Court DENIES Plaintiffs' objections to August 20, 2008 ruling by Magistrate Judge Bowler granting Schering Corporation's Motion for a Protective Order (Docket 5546). However, I modify it as follows: Plaintiffs may conduct discovery with respect to any branded drugs that have an AWP to AMP spread of over 30% for the year. Plaintiffs may also depose Professor Addanki regarding his calculations. While it may be better to have quarterly calculations, the proposal to use an AWP to AMP spread makes sense. Plaintiffs may submit an expert affidavit proposing alternative expert calculations, but it should be transparent and consistent in its methodology.

S/PATTI B. SARIS

United States District Judge

# EXHIBIT C

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

MDL NO. 1456

THIS DOCUMENT RELATES TO:

Civil Action No. 01-12257-PBS

*The City of New York v. Abbott  
Laboratories, Inc., et al.*

S.D.N.Y. Case No. 04-CV-06054

*County of Albany v. Abbott Laboratories,  
Inc., et al.*

N.D.N.Y. Case No. 05-CV-0425

*County of Allegany v. Abbott Laboratories,  
Inc., et al.*

W.D.N.Y. Case No. 05-CV-0236

*County of Broome v. Abbott Laboratories,  
Inc., et al.*

N.D.N.Y. Case No. 05-CV-0456

*County of Cattaraugus v. Abbott  
Laboratories, Inc., et al.*

W.D.N.Y. Case No. 05-CV-0256

*County of Cayuga v. Abbott Laboratories,  
Inc., et al.*

N.D.N.Y. Case No. 05-CV-0423

*County of Chautauqua v. Abbott  
Laboratories, Inc., et al.*

W.D.N.Y. Case No. 05-CV-0214

*County of Chemung v. Abbott  
Laboratories, Inc., et al.*

W.D.N.Y. Case No. 05-CV-6744

*County of Chenango v. Abbott  
Laboratories, Inc., et al.*

N.D.N.Y. Case No. 05-CV-0354

*County of Columbia v. Abbott  
Laboratories, Inc., et al.*

N.D.N.Y. Case No. 05-CV-0867

*County of Cortland v. Abbott Laboratories,  
Inc., et al.*

N.D.N.Y. Case No. 05-CV-0881

*County of Dutchess v. Abbott Laboratories,  
Inc., et al.*

S.D.N.Y. Case No. 05-CV-6458 )  
*County of Essex v. Abbott Laboratories,* )  
*Inc., et al.* )  
N.D.N.Y. Case No. 05-CV-0878 )  
*County of Fulton v. Abbott Laboratories,* )  
*Inc., et al.* )  
N.D.N.Y. Case No. 05-CV-0519 )  
*County of Genesee v. Abbott Laboratories,* )  
*Inc., et al.* )  
W.D.N.Y. Case No. 05-CV-00267 )  
*County of Greene v. Abbott Laboratories,* )  
*Inc., et al.* )  
N.D.N.Y. Case No. 05-CV-0474 )  
*County of Herkimer v. Abbott* )  
*Laboratories, Inc., et al.* )  
N.D.N.Y. Case No. 05-CV-00415 )  
*County of Jefferson v. Abbott Laboratories,* )  
*Inc., et al.* )  
N.D.N.Y. Case No. 05-CV-0715 )  
*County of Lewis v. Abbott Laboratories,* )  
*Inc., et al.* )  
N.D.N.Y. Case No. 05-CV-0839 )  
*County of Madison v. Abbott Laboratories,* )  
*Inc., et al.* )  
N.D.N.Y. Case No. 05-CV-00714 )  
*County of Monroe v. Abbott Laboratories,* )  
*Inc., et al.* )  
W.D.N.Y. Case No. 05-CV-6148 )  
*County of Nassau v. Abbott Laboratories,* )  
*Inc., et al.* )  
E.D.N.Y. Case No. 04-CV-05126 )  
*County of Niagara v. Abbott Laboratories,* )  
*Inc., et al.* )  
W.D.N.Y. Case No. 05-CV-06296 )  
*County of Oneida v. Abbott Laboratories,* )  
*Inc., et al.* )  
N.D.N.Y. Case No. 05-CV-0489 )  
*County of Onondaga v. Abbott* )  
*Laboratories, Inc., et al.* )  
N.D.N.Y. Case No. 05-CV-0088 )  
*County of Ontario v. Abbott Laboratories,* )  
*Inc., et al.* )  
W.D.N.Y. Case No. 05-CV-6373 )  
*County of Orange v. Abbott Laboratories,* )  
*Inc., et al.* )  
S.D.N.Y. Case No. 07-CV-2777 )

*County of Orleans v. Abbott Laboratories, Inc., et al.* )  
W.D.N.Y. Case No. 05-CV-6371 )  
*County of Putnam v. Abbott Laboratories, Inc., et al.* )  
S.D.N.Y. Case No. 05-CV-04740 )  
*County of Rensselaer v. Abbott Laboratories, Inc., et al.* )  
N.D.N.Y. Case No. 05-CV-00422 )  
*County of Rockland v. Abbott Laboratories, Inc., et al.* )  
S.D.N.Y. Case No. 03-CV-7055 )  
*County of Schuyler v. Abbott Laboratories, Inc., et al.* )  
W.D.N.Y. Case No. 05-CV-6387 )  
*County of Seneca v. Abbott Laboratories, Inc., et al.* )  
W.D.N.Y. Case No. 05-CV-6370 )  
*County of St. Lawrence v. Abbott Laboratories, Inc., et al.* )  
N.D.N.Y. Case No. 05-CV-0479 )  
*County of Saratoga v. Abbott Laboratories, Inc., et al.* )  
N.D.N.Y. Case No. 05-CV-0478 )  
*County of Steuben v. Abbott Laboratories, Inc., et al.* )  
W.D.N.Y. Case No. 05-CV-6223 )  
*County of Suffolk v. Abbott Laboratories, Inc., et al.* )  
E.D.N.Y. Case No. 03-CV-12257 )  
*County of Tompkins v. Abbott Laboratories, Inc., et al.* )  
N.D.N.Y. Case No. 05-CV-0397 )  
*County of Ulster v. Abbott Laboratories, Inc., et al.* )  
N.D.N.Y. Case No. 06-CV-0123 )  
*County of Warren v. Abbott Laboratories, Inc., et al.* )  
N.D.N.Y. Case No. 05-CV-0468 )  
*County of Washington v. Abbott Laboratories, Inc., et al.* )  
N.D.N.Y. Case No. 05-CV-0408 )  
*County of Wayne v. Abbott Laboratories, Inc., et al.* )  
W.D.N.Y. Case No. 05-CV-06138 )  
*County of Westchester v. Abbott* )

<i>Laboratories, Inc., et al.</i>	)
S.D.N.Y. Case No. 03-CV-6178	)
<i>County of Wyoming v. Abbott</i>	)
<i>Laboratories, Inc., et al.</i>	)
W.D.N.Y. Case No. 05-CV-6379	)
<i>County of Yates v. Abbott Laboratories,</i>	)
<i>Inc., et al.</i>	)
W.D.N.Y. Case No. 05-CV-06172	)
	)
	)

## **Affidavit of Sumanth Addanki**

**February 21, 2008**



## **I. Introduction**

### **A. Qualifications and Assignment**

1. I am an economist and a Senior Vice President at NERA Economic Consulting (NERA). I hold A.M and Ph.D. degrees in economics from Harvard University and have specialized in the study of industrial organization. I have published articles on industrial organization economics and have written articles on antitrust issues for the American Bar Association (ABA) and other like institutions. These institutions have also invited me to lecture and comment on the market impact of various marketing, pricing and intellectual property strategies employed by firms in general as well as specifically in the pharmaceutical industry. I have testified by invitation before the Federal Trade Commission (FTC) on the analysis of competition in high technology industries.
2. I have consulted on many antitrust, intellectual property and commercial damages cases involving different industries, including agriculture, airlines, computer hardware and software, electronic components, health care, newspaper, office products, oil and gas, tobacco, and tools and hardware among many others. In addition, I have consulted extensively in the pharmaceutical industry, analyzing the market impact of various pricing, marketing and intellectual property strategies; assessing the impact of mergers and acquisitions; studying the effect of suppressed or delayed generic competition; and assessing economic damages, among other assignments. I have previously worked on matters involving allegations of AWP manipulation.

3. Some of my consulting assignments have led to my being qualified as an expert economist in Federal courts and testifying in those courts as an expert in the economics of industrial organization. I have also testified on the appropriate analysis of pharmaceutical markets in proceedings before the FTC.
4. My curriculum vitae, which is appended to this report as Exhibit 1, includes a list of all my publications within the preceding ten years and my testimony as an expert at trial or in deposition within the preceding four years.
5. NERA is being compensated at my customary hourly rate of \$650 for my services in this matter.

**B. Scope of the Engagement**

6. Ropes & Gray, counsel for Schering Corporation ("Schering"), asked me to perform the following calculations and analyses. For the branded Schering prescription drugs at issue, for the years at issue in this matter in which the drug was not effectively obsolete:
  - Calculate the difference, or "spread", between the AMP (Average Manufacturer Price) and the AWP (Average Wholesale Price) as a percentage of the AMP for each of the accused Schering products;
  - Estimate the extent to which the products were sold by Schering at prices that were, on average, at or near their Wholesale Acquisition Cost (WAC).<sup>1</sup>

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<sup>1</sup> For my purposes, I assume that products are effectively obsolete when they are declared to be obsolete or discontinued, or are being converted to over-the-counter products, or such events are imminent.

I was asked to assume that the relevant period was from January 1, 1997 to December 31, 2005. I discuss each of these assignments in the sections below and present my results in the accompanying exhibits.

**C. Information Relied Upon**

7. This affidavit is based on my professional training and experience, including my experience working in other cases involving allegations of AWP manipulation. I also rely on my own prior research and my review and analysis of materials related to this and related lawsuits. My staff at NERA and I have reviewed various materials, including sales data for the products at issue, data from pricing compendia, public documents and court filings. A list of the materials relied upon in preparing this report is attached as Exhibit 2.
8. I reserve the right to supplement or revise my conclusions if additional information is provided to me or if additional research, reflection or the correction of inadvertent errors leads me to change my current opinions.

**II. AMP-Based "Spreads"**

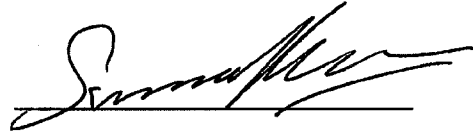
9. I have been asked to calculate the average difference, or "spread", between AWP and AMP for the accused products as a percentage of AMP by NDC.<sup>2</sup> The results of these calculations are shown in Exhibit 3. As is evident from Exhibit 3, most of these "spreads" are below 30 percent of AMP, and those that are not show no particular pattern and are, moreover, generally only modestly higher.

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<sup>2</sup> Although the NDCs at issue have been identified at the 11-digit level, AMPs are reported to the Centers for Medicare & Medicaid Services at the 9-digit level. I was asked to calculate "spreads" at the 9-digit level.

### **III. Wholesale Acquisition Cost (WAC)**

10. The WAC is effectively a “list price” in the branded pharmaceutical industry, and a substantial portion of Schering’s sales of the branded pharmaceutical products at issue—over 85 percent—are actually made at or very near WAC, as shown in Exhibit 4. I have also performed this analysis by brand, and the results are reported in Exhibit 5. As the exhibit shows, many of the brands have over 90 percent of their sales made at or very near WAC. When these products are analyzed at the same level as the “AMP-based spreads” similar results obtain, as shown in Exhibit 6.



Sumanth Addanki

2-21-08

Date

## EXHIBIT 1

### NERA

Economic Consulting

#### **Sumanth Addanki**

Senior Vice President

National Economic Research Associates, Inc.  
50 Main Street  
White Plains, New York 10606  
+1 914 448 4000 Fax +1 914 448 4040  
Direct dial: +1 914 448 4060  
[sumanth.addanki@nera.com](mailto:sumanth.addanki@nera.com)  
[www.nera.com](http://www.nera.com)

## SUMANTH ADDANKI SENIOR VICE PRESIDENT

### Education

#### **Harvard University**

Ph.D., Economics, 1986

A.M., Economics, 1982

#### **Birla Institute of Technology and Science, India**

M.A. (Hons.), Economics, 1980

### Professional Experience

1986-	<b>NERA Economic Consulting</b> Senior Vice President (current position)
1997	<b>New York University, Robert F. Wagner Graduate School of Public Service</b> Adjunct Assistant Professor of Public and Health Administration
1981-1986	<b>National Bureau of Economic Research Inc.</b> Research Associate and Computer Manager
1981-1985	<b>Harvard University</b> Instructor in Economics, Teaching Fellow, and Assistant Head Tutor
1980	<b>National Council of Applied Economic Research, India</b> Research Associate

### Testimony (2004 – 2008)

*Discover Financial Services, et al. v. Visa U.S.A. Inc., et al.*, U.S. District Court for the Southern District of New York, Civil Action No 04-CF-7844 (BSJ) (Deposition Testimony). December 6-7, 2007.

Sumanth Addanki

*State of Alabama v. Abbott Laboratories, Inc., et al.*, In the Circuit Court of Montgomery County, Alabama, CV-05-219 (Deposition Testimony). November 29-30, 2007.

*Dynax Corporation v. Chemguard, Inc.*, U.S. District Court for the Southern District of New York, Index: 06-CIV-5143 (CM)(ECF CASE) (Deposition Testimony).

*State of Colorado, et al. v. Warner Chilcott Holdings Company III, Ltd, et al.*, U.S. District Court for the District of Columbia, Civil Action No 1:05CV02182 (CKK) (Deposition Testimony).

*Novartis Corporation, Novartis Pharmaceuticals Corporation, and Novartis International AG v. Teva Pharmaceuticals USA, Inc.*, U.S. District Court for the District of New Jersey, Civil Action Nos. 04-4473 and 06-1130 (HAA)(MF) (Deposition Testimony).

*In re Pharmaceutical Industry Average Wholesale Price Litigation (MDL 1456)*, U.S. District Court for the District of Massachusetts, Civil Action No. 01-12257-PBS.

*Briant Chun-Hoon and Carlo Guglielmino v. McKee Foods Corporation, a Tennessee Corporation; and Does 1 through 100, inclusive*, U.S. District Court for the Northern District of California, Case No. C05-00620 VRW (Deposition Testimony).

*XIOtech Corporation v. Compellent Technologies, Inc., Michael Markovich, Russell B. Taddiken, Scott A. Winslow, Kristofer M. Zuber*, District Court for the State of Minnesota, Fourth Judicial District, Court File No.: 04-5065 (Deposition Testimony).

*Medtronic Minimed, Inc., v. Smiths Medical MD, Inc.*, U. S. District Court for the District of Delaware, Civil Action No. 03-776-KAJ (Deposition Testimony).

## **Papers and Publications (1998 – 2008)**

“*Schering-Plough and the Antitrust Analysis of Patent Settlement Agreements in Pharmaceutical Markets*,” *Antitrust Insights*, National Economic Research Associates, Inc., 2005.

“*Market Definitions Using Econometrics: An Apparent Paradox Explained*,” *Antitrust Insights*, National Economic Research Associates, Inc., 2001.

“*Presenting Complex Technical and Economic Evidence: Lessons From The Trenches*,” *Antitrust and Intellectual Property: The Crossroads*, American Bar Association, 2000.

“*The Relevant Market in Intellectual Property Antitrust: An Economist’s Overview*,” Practising Law Institute, Intellectual Property Antitrust, June 1998.

February 2008

## **Exhibit 2**

### **Case Materials**

New York Counties v. Abbott Laboratories, Inc., et al., Revised First Amended Consolidated Complaint, filed October 5, 2007, with Exhibit B.

### **Data**

Schering Sales Data.

Schering AMP Data ("AMPs\_Sebizon\_Normodyne.xls", "AWP\_litigation\_AMP\_Data.xls", "extract MCR amp units\_addl.xls", "MCR\_AMP\_Units.xls", "NY\_Additional\_NDCs\_AMP\_Data.xls", "NY\_Additional\_NDCs\_AMP\_Units\_and\_Pkgs.xls").

First DataBank Data.

Medispan Data.

Medicaid State Drug Utilization Data including "Definitions for State Drug Utilization Data Specifications", Centers for Medicare & Medicaid Services.

### **Miscellaneous**

PRNewswire, "Schering-Plough Aims To Make CLARITIN® Premier Brand In OTC Category, Establish CLARINEX® As Premier Brand In Prescription Category," March 8, 2002.

Schering-Plough Corporation, Form 10-K, for the fiscal year ended December 31, 2001, Item 1.

Schering-Plough Corporation, Form 8-K, Exhibit 99.1, "Schering-Plough Reports Sales, Earnings For 2002 Third Quarter," October 24, 2002.

**Exhibit 3**  
**Percentage "Spreads"<sup>1,2</sup> between AWP and AMP**  
**Branded Products Acused in New York Counties<sup>3</sup>**  
**1997 - 2005**

Brand Name	9-Digit NDC	Date Added to First DataBank	Date of First Gross Sales	Date of Last Gross Sales	1997	1998	1999	2000	2001	2002	2003	2004	2005
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)
Celestone Soluspan	000850566	01/01/82	01/01/91	09/30/07	25.0	25.6	25.4	30.3	24.3	24.6	30.6		
Claritin	000850458	04/14/93	04/03/07	04/03/07	23.2	22.9	22.8	23.7	24.7				
Claritin	000850612	10/15/96	10/14/96	04/23/01	23.4	22.8							
Claritin	000851128	02/06/97	02/24/97	01/29/07	23.0	22.7	22.7	23.2	24.8				
Claritin	000851223	05/25/99	04/20/99	04/03/07			22.7	23.4	25.0				
Claritin-D	000850635	11/15/94	11/14/94	08/07/07	23.4	23.0	22.8	23.2	25.4				
Claritin-D	000851233	12/07/98	12/01/98	01/31/04			22.6	23.2	25.2				
Diprolone	000850575	03/19/87	01/01/91	09/27/07	26.8	26.3	26.5	27.4	28.1	29.3	31.9	40.8	37.3
Diprolone	000850517	08/07/83	01/01/91	09/27/07	25.7	25.5	24.4	26.4	27.1	27.6	34.8	63.1	32.5
Diprolone	000850634	12/05/91	12/01/91	12/20/06	27.4	27.7	27.7	28.5	29.9	32.2	33.2		
Diprolone	000850962	05/19/88	01/01/91	09/27/07	22.9	22.7	22.8	23.5	24.2	24.1	29.4	29.3	29.5
Elocon	000850370	07/02/87	01/01/91	09/26/07	29.5	29.2	29.4	29.9	31.8	29.8	41.8	38.0	35.1
Elocon	000850567	07/02/87	01/01/91	09/30/07	29.9	29.4	29.8	29.5	30.7	32.4	36.2	36.9	35.8
Elocon	000850854	05/04/89	01/01/91	09/26/07	22.9	22.7	22.8	23.4	24.4	24.4	32.1	30.5	28.9
Estinyl	000850070	01/01/82	01/01/97	03/07/02	24.5	25.6	23.8	23.8	25.0	29.0	27.2	27.7	
Eulexin	000850325	02/09/89	01/01/91	04/03/07	23.2	22.8	23.0	24.5	25.4	27.9	33.7	28.4	34.2
Indur	000851153	05/05/95	05/10/95	11/07/06	22.7	22.9	23.7	29.4	36.7	27.9	28.5	29.7	29.7
Indur	000853306	12/26/95	01/09/96	12/20/06	22.7	22.9	24.8	35.3	48.2	27.9	28.5		
Intron A	000850285	06/12/86	01/01/91	01/07/04	22.8	22.8	22.7	24.9	23.3	22.6	28.0	30.1	29.5
Intron A	000850539	12/01/88	01/01/91	09/27/07	23.0	22.5	22.6	25.0	23.8	25.7	28.2	29.9	29.6
Intron A	000850571	06/12/86	01/01/91	09/28/07	19.9	24.4	23.3	25.5	23.9	26.2			
Intron A	000850647	01/03/91	03/04/91	11/08/02	26.9	22.7	23.0	25.1	22.9	26.0	28.8	30.1	29.5
Intron A	000851110	12/19/95	02/06/95	09/26/07	22.6	22.7	22.7	25.2	24.4	25.2	28.3	30.2	29.5
Intron A	000851133	01/30/97	02/04/97	09/27/07	23.3	83.3	82.2	25.2	24.2	25.6	29.3	30.3	29.5
Intron A	000851168	01/30/97	02/04/97	09/27/07	22.6	22.8	22.8	25.2	24.6	25.5	29.3	32.7	29.6
Intron A	000851179	01/30/97	02/03/97	09/05/07	22.4	22.6	22.5	25.3	23.7	22.6	28.6		
Intron A	000851191	01/30/97	02/03/97	12/12/02	22.6	22.7	22.6	25.4	22.8	22.6			
Intron A	000851235	07/14/98	07/07/98	09/27/07		22.7	22.8	25.3	24.3	25.1	28.9	30.2	29.5
Intron A	000851242	07/14/98	07/07/98	09/27/07		22.7	22.9	25.7	24.4	24.4	28.5	29.8	29.6
Intron A	000851254	07/14/98	07/07/98	09/26/07		22.7	22.7	25.0	24.7	24.9	28.5	30.2	29.7
K-Dur	000850263	01/22/87	01/01/91	09/05/07	23.0	22.9	22.6	24.5	25.5	24.5	23.9	30.0	29.3
K-Dur	000850787	01/22/87	01/01/91	09/05/07	23.5	23.0	22.9	24.5	25.5	27.6	37.6	30.2	30.0
Lorlatin	000850182	01/01/82	01/01/91	12/11/02	12.8	14.0	4.8	3.9	4.1				
Lorlatin	000850613	01/01/82	01/01/91	10/09/02	51.7	52.4	54.1	56.8	42.7	44.5	28.3	31.3	30.6
Lorlatin	000850809	01/03/01	12/12/00	09/25/07					33.9				
Lorlatin	000850924	07/01/84	01/01/91	09/27/07	25.2	24.9	24.9	26.4	25.0	29.7	27.8	30.0	
Nasonex	000851197	10/16/97	03/21/97	03/21/07	25.3	31.3	26.0	26.3	29.8	31.5	30.5	36.6	42.8
Nitro-Dur	000850819	03/31/94	03/22/94	09/28/07	26.74	37.3	31.2	28.4	33.9	34.4	32.5	75.5	50.0
Nitro-Dur	000853305	01/29/87	01/01/91	09/27/07					31.5	34.0	31.2	50.2	60.3
Nitro-Dur	000853310	01/29/87	01/01/91	09/26/07	26.7	30.7	26.7	27.7	34.4	34.8	32.6	61.6	43.1
Nitro-Dur	000853315	01/29/87	01/01/91	09/27/07	26.4	30.5	26.8	27.9	34.4	32.5	31.2	49.2	96.1
Nitro-Dur	000853320	01/29/87	01/01/91	09/27/07	26.3	29.5	26.2	27.0	31.5	32.7	30.6	45.1	73.5
Nitro-Dur	000853330	01/29/87	01/01/91	09/26/07	31.7	30.4	30.3	29.3	31.8				
Nitro-Dur	000850752	08/24/84	01/01/91	02/08/02	38.1	37.3	35.2	35.1	27.7	27.3	29.7	32.0	32.3
Normadyne	000851279	01/31/01	02/06/01	09/28/07					22.7	27.1	29.8	31.3	31.3
Peg-Intron	000851291	01/31/01	02/06/01	09/26/07					22.6	27.1	29.8	31.3	31.2
Peg-Intron	000851297	02/02/04	02/10/04	09/27/07					23.0	27.1	29.6	31.8	32.1
Peg-Intron	000851304	01/31/01	02/06/01	09/27/07								31.7	31.1
Peg-Intron	000851316	02/02/04	02/10/04	09/27/07								31.6	31.9
Peg-Intron	000851323	02/02/04	02/11/04	12/30/05					22.8	27.2	28.7	30.5	30.9
Peg-Intron	000851368	01/31/01	02/06/01	09/27/07								30.5	31.8
Peg-Intron	000851370	02/02/04	02/16/04	09/27/07									



**Exhibit 3**  
**Percentage "Spreads"<sup>1,2</sup> between AWP and AMP**  
**Branded Products Accused in New York Counties<sup>3</sup>**  
**1997 - 2005**

Brand Name	9-Digit NDC	Date Added to First DataBank	Date of First Gross Sales	Date of Last Gross Sales	1997	1998	1999	2000	2001	2002	2003	2004	2005
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)
Pernitil	000850296	01/01/82	01/02/97	03/30/00	23.1	23.2	23.4						
Proventil	000850208	02/19/87	01/01/91	03/30/03	40.6	27.7	24.4	29.3	30.5	42.1			
Proventil	000850209	02/19/87	01/01/91	10/18/02	53.1	27.2	24.2	25.7	40.5	29.6			
Proventil	000850431	06/25/87	01/01/91	04/22/02	23.2	22.7	22.3	23.6	24.7				
Proventil	000850614	01/01/82	01/01/91	09/27/07	27.5	23.9	23.6	24.1	23.4	29.7	28.5	29.3	31.6
Proventil	000851132	10/16/96	12/16/96	09/30/07	37.7	28.0	23.1	23.9	40.9	30.9	27.6	29.3	30.4
Rebetron	000851236	06/11/98	06/08/98	11/30/04			24.0	26.3	26.3	17.0	22.1	26.9	
Rebetron	000851241	06/11/98	06/08/98	05/08/03			26.7	28.2	28.7	27.4			
Rebetron	000851258	07/14/98	07/07/98	03/15/05			28.0	29.9	30.6	28.0	26.1	33.5	
Temodar	000851244	08/19/99	08/23/99	09/19/07				22.8	24.5	30.2	28.2	31.0	29.1
Temodar	000851248	08/19/99	08/23/99	09/28/07				22.8	24.5	30.3	28.4	29.9	29.1
Temodar	000851252	08/19/99	08/23/99	09/10/07				22.8	24.5	29.6	28.4	30.2	29.5
Temodar	000851259	08/19/99	08/23/99	08/27/07				22.9	24.4	29.6	28.5	30.2	29.0
Theco-Dur	000850584	01/22/87	01/01/91	02/17/02	43.4	32.8	34.8	34.0					
Trilafton	000850012	01/01/82	01/02/97	09/16/02	27.1	29.0	28.2	31.8	35.0				
Trilafton	000850363	01/01/82	01/01/97	05/17/00	22.6	23.7	22.5						
Vancense	000850041	01/01/82	01/01/91	01/26/01	21.8	19.9	23.6						
Vancense	000851049	06/27/96	06/27/96	11/22/02	28.4	24.6	23.0	23.4	26.0				
Vanceril	000850736	01/01/82	01/01/91	04/03/07	24.3	23.8	23.1	26.2	24.7	31.5			

Notes: - FDB package sizes for certain NDCs of Proventil and Trilafton were replaced with package sizes derived using implied package sizes from Medispan.

<sup>1</sup> "Spreads" (AWP - AMP) / AMP, were calculated as the weighted average of "spreads", calculated at the 11-digit NDC level, across all accused NDCs within a 9-digit NDC. At the 11-digit NDC level, "spreads" were calculated separately for each period during the calendar year during which neither the AWP nor the AMP had changed. These "spreads" were then aggregated over the calendar year and across 11-digit NDCs using "Gross Sales Activity in the AMP-Related Classes of Trade" (see Note 4).

<sup>2</sup> A 9-digit NDC was considered to be effectively obsolete for a given quarter if its constituent 11-digit NDCs were all declared to be obsolete, discontinued, or converted to over-the-counter products; or if "Gross Sales Activity in the AMP-Related Classes of Trade" had fallen substantially (by 90 percent or more) in anticipation of such events. A 9-digit NDC was considered to be effectively obsolete for a given year if the first 11-digit NDC to be added to First DataBank (FDB) within the 9-digit NDC was added after June 30th of that year, there were gross sales for less than six months during that year, or the 9-digit NDC was effectively obsolete for at least three quarters of the year. Spreads were not calculated for years during which the 9-digit NDC was effectively obsolete or where the percent of sales at near "WAC" was not calculated for the reasons indicated in Exhibit 6.

<sup>3</sup> "Branded Products Accused in New York Counties" include all Schering products listed in Exhibit B to Revised First Amended Consolidated Complaint, with the exception of Gyne-Lotrimin NDCs 00085067004 and 00085088711, for which sales data were not available.

<sup>4</sup> "Gross Sales Activity in the AMP-Related Classes of Trade" is defined as Total Gross Sales Activity, limited to the following classes of trade: 111, 121, 122, 123, 171, 172, 341, and 346. Total Gross Sales Activity is defined as direct sales with non-missing credit codes and contract sales from the indirect sales data. Gross sales exclude non-US transactions and transactions with either non-positive revenue or quantity.

Sources: - Schering Sales Data.  
- Medispan Data.  
- First DataBank Data.  
- Exhibit B to Revised First Amended Consolidated Complaint ("City of NY and New York Counties Exhibit B.xlsx").  
- Schering AMP Data.  
- PRNewswire, "Schering-Plough Aims To Make CLARINEX® Premier Brand In OTC Category, Establish CLARINEX® As Premier Brand In Prescription Category," March 8, 2002.  
- Schering-Plough Corporation, Form 10-K, for the fiscal year ended December 31, 2001, Item 1.  
- Schering-Plough Corporation, Form 8-K, Exhibit 99.1, "Schering-Plough Reports Sales, Earnings For 2002 Third Quarter," October 24, 2002.

**Exhibit 4**  
**Distribution of Schering Sales by Discount Percentage**  
**Branded Products Accused in New York Counties**<sup>1</sup>  
**1997 - 2005**

Average Price as a Percent of Prevailing WAC			
Greater Than	Less Than or Equal To	Percent of Sales	Cumulative Percent of Sales
(Percent)	(Percent)	(Percent)	(Percent)
(a)	(b)	(c)	(d)
100		0.34 %	0.34 %
99	100	0.07	0.41
98	99	0.21	0.62
97	98	53.51	54.14
96	97	20.40	74.54
95	96	10.97	85.51
94	95	4.83	90.33
93	94	1.60	91.94
92	93	1.05	92.98
91	92	1.41	94.40
90	91	0.57	94.96
85	90	1.33	96.29
80	85	0.78	97.08
	80	2.92	100.00

- Notes: - Sales exclude non-US and non-sales transactions, and do not include rebates found in the rebates files.
- Further reductions for prompt payment of 2 percent were applied to direct sales.
- Total Sales were \$28,822,447,176.41. If net revenue for a particular NDC and customer number for the prevailing WAC period was negative (-\$266,533,297.54 total) or if the revenue or quantity before chargebacks or price paid were missing or otherwise non-positive (\$5,756,677.95 total), or if the WAC was not available (\$804,596,173.94 total), it was dropped.
- Wholesale entries from the chargebacks data without corresponding wholesale entries in the sales data were excluded (-\$161,637,794.73 total).
- Wholesale entries from the chargebacks data were matched with wholesale entries in the sales data by prevailing WAC period.
- Price is calculated by customer, as identified by customer number and, for a small number of customer numbers that appear in multiple classes of trade, by customer number and class of trade.
- WAC values were retrieved from FDB by NDC as the prevailing WAC on the date of the sales transaction.
- FDB package sizes for certain NDCs of Proventil and Trilafon were replaced with package sizes derived using implied package sizes from Medispan.
- Ratios of average price to WAC were annualized to the customer and 11-digit NDC level, weighting by Gross Sales Activity in quantity. Gross Sales Activity was calculated as total sales by customer for blank-credit-code transactions in the Direct Sales data and end customer Contract Sales in the Indirect Sales, excluding non-US and non-positive revenue or quantity transactions, by calendar year and prevailing WAC period. The distribution of sales by discount percentage was then calculated by the weighted adjusted prevailing period revenue.
- The time period used for calculating both average prices and Gross Sales Activity was restricted to the relevant period, 1997 through 2005.
- A 9-digit NDC was considered to be effectively obsolete in a quarter if its constituent 11-digit NDCs were declared to be obsolete, discontinued, or converted to over-the-counter products.

<sup>1</sup> The table includes all branded Schering products listed in Exhibit B of the Revised First Amended Consolidated Complaint, except for Gyne-Lotrimin, for which Sales Data were not available.

- Sources: - Schering Sales Data.
- First DataBank Data.
- Medispan Data.
- Schering AMP Data.
- Exhibit B to Revised First Amended Consolidated Complaint ("City\_of\_NY\_and\_New\_York\_Counties\_Revised\_Exhibit\_B.xls")
- PRNewswire, "Schering-Plough Aims To Make CLARITIN® Premier Brand In OTC Category, Establish CLARINEX® As Premier Brand In Prescription Category," March 8, 2002.
- Schering-Plough Corporation, Form 10-K, for the fiscal year ended December 31, 2001, Item 1.
- Schering-Plough Corporation, Form 8-K, Exhibit 99.1, "Schering-Plough Reports Sales, Earnings For 2002 Third Quarter," October 24, 2002.

**Exhibit 5**  
**Percent of Schering Sales Made at Discounts**  
**No Greater Than 5% Off the Prevailing FDB WAC**  
**Branded Products Accused in New York Counties <sup>1</sup>**  
**1997 - 2005**

Brand	Percent of Sales within 5% of WAC	Share of New York Medicaid Reimbursement for Accused Schering Drugs
(a)	(b)	(c)
Celestone Soluspan	14.8 %	0.0 %
Claritin	94.8	25.5
Claritin-D	95.6	9.2
Diprolene	92.4	1.7
Elocon	92.0	5.0
Estinyl	92.4	0.0
Eulexin	63.1	0.8
Imdur	93.3	2.5
Intron A	72.9	1.8
K-Dur	87.3	2.8
Lotrimin	62.9	0.1
Lotrisone	87.2	9.5
Nasonex	91.9	11.2
Nitro-Dur	54.0	2.1
Normodyne	76.2	0.3
Peg-Intron	82.9	9.1
Permitil	41.4	0.0
Proventil	78.8	6.8
Rebetron	58.1	5.1
Temodar	91.5	2.2
Theo-Dur	67.9	0.1
Trilafon	41.2	0.0
Vancenase	82.2	1.3
Vanceril	74.1	2.9

- Notes: - Sales exclude non-US and non-sales transactions, and do not include rebates found in the rebates files.
- Further reductions for prompt payment of 2 percent were applied to direct sales.
- Total Sales were \$28,822,447,176.41. If net revenue for a particular NDC and customer number for the prevailing WAC period was negative (-\$266,533,297.54 total) or if the revenue or quantity before chargebacks or price paid were missing or otherwise non-positive (\$5,756,677.95 total), or if the WAC was not available (\$804,596,173.94 total), it was dropped.
- Wholesale entries from the chargebacks data without corresponding wholesale entries in the sales data were excluded (-\$161,637,794.73 total).
- Wholesale entries from the chargebacks data were matched with wholesale entries in the sales data by prevailing WAC period.
- Price is calculated by customer, as identified by customer number and, for a small number of customer numbers that appear in multiple classes of trade, by customer number and class of trade.
- WAC values were retrieved from FDB by NDC as the prevailing WAC on the date of the sales transaction.
- FDB package sizes for certain NDCs of Proventil and Trilafon were replaced with package sizes derived using implied package sizes from Medispan.
- Ratios of average price to WAC were annualized to the customer and 11-digit NDC level, weighting by Gross

**Percent of Schering Sales Made at Discounts  
No Greater Than 5% Off the Prevailing FDB WAC  
Branded Products Accused in New York Counties <sup>1</sup>  
1997 - 2005**

Sales Activity in quantity. Gross Sales Activity was calculated as total sales by customer for blank-credit-code transactions in the Direct Sales data and end customer Contract Sales in the Indirect Sales, excluding non-US and non-positive revenue or quantity transactions, by calendar year and prevailing WAC period. Sales within 5 percent of WAC were then calculated by the weighted adjusted prevailing period revenue.

- The time period used for calculating both average prices and Gross Sales Activity was restricted to the relevant period, 1997 through 2005.
- A 9-digit NDC was considered to be effectively obsolete in a quarter if its constituent 11-digit NDCs were declared to be obsolete, discontinued, or converted to over-the-counter products.
- New York Medicaid reimbursement reflects the total amount the State reimbursed to pharmacists for the drug. This total is not reduced or affected by Medicaid rebates paid to the state. This amount represents both the Federal and State reimbursement and is inclusive of dispensing fees.

<sup>1</sup> The table includes all branded Schering products listed in Exhibit B of the Revised First Amended Consolidated Complaint, except for Gyne-Lotrimin, for which Sales Data were not available.

- Sources:
- Schering Sales Data.
  - First DataBank Data.
  - Medispan Data.
  - Schering AMP Data.
  - Medicaid State Drug Utilization Data including "Definitions for State Drug Utilization Data Specifications", Centers for Medicare & Medicaid Services.
  - Exhibit B to Revised First Amended Consolidated Complaint ("City\_of\_NY\_and\_New\_York\_Counties\_Revised\_Exhibit\_B.xls")
  - PRNewswire, "Schering-Plough Aims To Make CLARITIN® Premier Brand In OTC Category, Establish CLARINEX® As Premier Brand In Prescription Category," March 8, 2002.
  - Schering-Plough Corporation, Form 10-K, for the fiscal year ended December 31, 2001, Item 1.
  - Schering-Plough Corporation, Form 8-K, Exhibit 99.1, "Schering-Plough Reports Sales, Earnings For 2002 Third Quarter," October 24, 2002.

**Exhibit 6**  
**Percent of Schering Sales Made at Discounts**  
**No Greater Than 5% Off the Prevailing FDB WAC**  
**Branded Products Accused in New York Counties<sup>1</sup>**  
**1997 - 2005**

Brand	9-Digit NDC	Date Added to FDB	Date of First Sale	Date of Last Sale	1997	1998	1999	2000	2001	2002	2003	2004	2005
					(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)
Celestone Soluspan	000850566	1/1/1982	1/1/1991	9/30/2007	15.0 %	13.6 %	21.0 %	9.7 %	30.6 %	28.6 %	20.3 %	43.7 %	91.4 %
Claritin	000850458	4/14/1993	4/15/1993	4/3/2007	95.0	95.1	95.5	93.7	91.2				
Claritin	000850612	10/15/1996	10/14/1996	4/23/2001	96.6	96.2							
Claritin	000851128	2/6/1997	2/24/1997	1/29/2007	99.1	97.2	93.9	91.7	92.6				
Claritin	000851223	5/25/1999	4/20/1999	4/3/2007			96.9	95.3	95.6				
Claritin-D	000850635	11/15/1994	11/14/1994	8/7/2007	97.6	95.9	97.5	97.6	66.2				
Claritin-D	000851233	12/7/1998	12/1/1998	1/31/2004			93.4	93.3	91.8	75.7	82.1	57.9	87.3
Diprolene	000850517	3/19/1987	1/1/1991	9/27/2007	92.3	93.9	93.4	93.3	93.2	76.9	53.8	56.6	96.7
Diprolene	000850575	8/7/1983	1/1/1991	9/27/2007	89.5	91.4	90.4	92.8	93.2	42.9	67.5		
Diprolene	000850634	12/5/1991	12/1/1991	12/20/2006	93.9	95.3	95.0	94.2	94.0	86.9	88.0	86.9	96.8
Diprolene	000850962	5/19/1988	1/1/1991	9/27/2007	94.2	94.3	94.3	93.1	93.6	81.3	38.6	93.5	96.1
Elocon	000850370	7/2/1987	1/1/1991	9/30/2007	94.2	95.3	94.9	95.0	95.2	69.8	78.5	97.1	93.5
Elocon	000850567	1/1/1989	1/1/1991	9/26/2007	93.9	96.0	95.5	96.5	96.4	97.7	46.1	89.3	97.9
Elocon	000850854	5/4/1989	1/1/1991	9/26/2007	96.3	97.1	96.8	96.5	96.5				
Estimyl	000850070	1/1/1982	1/1/1997	3/7/2002	94.6	93.6	93.7	91.4	82.2	36.5	33.4	71.7	
Eulexin	000850525	2/9/1989	1/1/1991	4/3/2007	68.8	70.2	67.1	63.6	48.6	85.6	84.4	93.9	97.1
Indur	000851153	5/5/1995	5/10/1995	11/7/2006	97.4	97.2	94.8	66.7	82.0	91.6	89.9	81.6	83.0
Indur	000853306	12/26/1995	1/1/1991	12/20/2006	95.3	95.7	56.5	48.7	50.3	71.9			
Intron A	000850285	6/12/1986	1/1/1991	1/7/2004	48.6	63.7	62.1	63.8	63.9	75.7	69.7	76.3	80.5
Intron A	000850339	12/1/1988	1/1/1991	9/27/2007	69.0	68.6	62.1	63.8	38.4	58.9	54.5	66.4	75.5
Intron A	000850571	6/12/1986	1/1/1991	9/28/2007	59.7	57.5	50.4	35.4	38.4				
Intron A	000850647	1/3/1991	3/4/1991	11/8/2002	88.6	96.7	94.9	53.5	63.4	75.1	64.1	79.8	86.7
Intron A	000851110	12/19/1995	12/6/1995	9/26/2007	74.5	77.3	69.4	59.9	45.6	71.6	64.4	75.4	86.3
Intron A	000851133	1/30/1997	2/4/1997	9/27/2007	71.5	77.2	76.4	60.3	54.1	78.5	60.4	79.2	84.9
Intron A	000851168	1/30/1997	2/3/1997	9/27/2007	81.1	74.0	80.8	68.7	59.8	79.6	63.4	76.0	81.2
Intron A	000851179	1/30/1997	2/3/1997	9/27/2007	82.5	86.0	78.3	54.7	55.8	79.6	63.4	76.0	81.2
Intron A	000851191	1/30/1997	2/3/1997	12/12/2002	90.6	81.4	83.9	65.1	69.7	76.0	67.6	81.8	88.0
Intron A	000851235	7/14/1998	7/7/1998	9/27/2007			89.3	77.9	78.4	85.0	79.6	85.5	89.1
Intron A	000851242	7/14/1998	7/7/1998	9/27/2007			89.2	76.7	79.9	83.5	81.2	88.7	90.8
Intron A	000851254	7/14/1998	7/7/1998	9/26/2007			87.1	81.7	74.5	88.3	86.7	81.9	95.1
K-Dur	000850263	1/22/1987	1/1/1991	9/5/2007	83.8	87.7	90.2	86.2	70.1	38.3	72.5		
K-Dur	000850787	1/22/1987	1/1/1991	9/5/2007	89.0	91.3	90.0	85.5	72.7	33.9			
Lotrimin	000850182	1/1/1982	1/1/1991	12/1/2002	73.1	67.4	71.7	66.3	68.1				
Lotrimin	000850613	1/1/1982	1/1/1991	10/9/2002	42.3	47.2	79.4	77.4	78.2				
Lotrisone	000850809	1/3/2001	12/12/2000	9/25/2007				46.6	46.6	94.3	84.9	80.0	83.5
Lotrisone	000850924	7/1/1984	1/1/1991	9/27/2007	89.5	89.9	88.0	86.4	91.7	91.2	94.6	94.8	95.6
Nasonex	000851197	10/16/1997	10/14/1997	3/21/2007			92.4	87.6	91.7	91.2	94.6	94.8	95.6
Niro-Dur	000850819	3/31/1994	3/22/1994	9/28/2007	88.0	83.8	77.0	79.6	75.3	87.0	79.9	74.5	76.1
Niro-Dur	000853305	1/29/1987	1/1/1991	9/27/2007	64.4	64.0	52.7	61.1	51.1	61.0	70.6	30.8	77.9
Niro-Dur	000853310	1/29/1987	1/1/1991	9/26/2007	62.6	56.9	55.0	57.3	53.5	63.5	82.8	50.9	87.7
Niro-Dur	000853315	1/29/1987	1/1/1991	9/27/2007	63.6	58.1	59.1	60.5	50.2				

**Exhibit 6**  
**Percent of Schering Sales Made at Discounts**  
**No Greater Than 5% Off the Prevailing FDB WAC**  
**Branded Products Accused in New York Counties<sup>1</sup>**  
**1997 - 2005**

Brand	9-Digit NDC	Date Added to FDB		Date of Last Sale		Year		2001		2002		2003		2004		2005	
		(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)
Nitro-Dur	000853320	1/29/1987	1/1/1991	9/27/2007	57.7	54.2	58.0	54.5	49.9	62.6	73.7	27.9	73.7				
Nitro-Dur	000853330	1/29/1987	1/1/1991	9/26/2007	62.4	56.4	56.3	59.0	51.0	68.6	85.4	44.9	76.5				
Normodyne	000850752	8/24/1984	1/1/1991	2/8/2002	77.1	83.4	63.2	74.8	72.3								
Peg-Intron	000851279	1/31/2001	2/6/2001	9/28/2007					96.7	93.9	65.6	59.5	58.2				
Peg-Intron	000851291	1/31/2001	2/6/2001	9/26/2007					96.4	95.5	77.5	67.5	72.3				
Peg-Intron	000851297	2/2/2004	2/10/2004	9/27/2007													
Peg-Intron	000851304	1/31/2001	2/6/2001	9/27/2007					97.4	94.2	67.4	63.1	65.2				
Peg-Intron	000851316	2/2/2004	2/10/2004	9/27/2007													
Peg-Intron	000851323	2/2/2004	2/11/2004	12/30/2005													
Peg-Intron	000851368	1/31/2001	2/6/2001	9/27/2007					97.0	95.6	76.3	75.3	81.5				
Peg-Intron	000851370	2/2/2004	2/16/2004	9/27/2007								76.4	75.0				
Permitil	000850296	1/1/1982	1/2/1997	3/30/2000	38.0	50.0	50.5	43.4	78.1	17.0							
Proventil	000850208	2/19/1987	1/1/1991	3/30/2003	24.1	48.9	30.5	86.7	75.7	98.4							
Proventil	000850209	2/19/1987	1/1/1991	10/18/2002	38.8	79.3	76.6	93.4	91.0								
Proventil	000850431	6/25/1987	1/1/1991	4/22/2002	93.4	93.7	91.2	88.0	89.4	67.8	82.5	85.1	89.1				
Proventil	000850614	1/1/1982	1/1/1991	9/27/2007	67.5	77.8	87.2	87.9	51.0	95.1	92.8	99.2	99.0				
Proventil	000851132	10/16/1996	12/16/1996	9/30/2007	83.1	80.7		76.1	41.5	59.2	57.3	64.6					
Rebetron	000851236	6/11/1998	6/8/1998	11/30/2004				70.6	50.1	52.5							
Rebetron	000851241	6/11/1998	6/8/1998	5/8/2003				89.3									
Rebetron	000851258	7/14/1998	7/7/1998	3/15/2005				86.3									
Temodar	000851244	8/19/1999	8/23/1999	9/19/2007				97.0	93.8	87.9	86.5	83.6	92.3				
Temodar	000851248	8/19/1999	8/23/1999	9/28/2007				97.5	94.8	93.0	87.7	90.6	92.4				
Temodar	000851252	8/19/1999	8/23/1999	9/10/2007				95.5	92.0	90.2	82.9	87.7	95.6				
Temodar	000851259	8/19/1999	8/23/1999	8/27/2007				96.5	92.7	91.7	92.1	87.9	93.0				
Theo-Dur	000850384	1/22/1987	1/1/1991	2/17/2002	52.0	78.2	75.6	70.7	67.9								
Trilafon	000850012	1/1/1982	1/2/1997	9/16/2002	26.7	37.4	63.1	74.9									
Trilafon	000850363	1/1/1982	1/1/1997	5/17/2000	33.7	52.3	58.5										
Vancense	000850041	1/1/1982	1/1/1991	1/26/2001	38.7	44.0	41.6										
Vancense	000851049	6/27/1996	6/27/1996	11/22/2002	60.2	83.4	91.8	90.9	58.3								
Vancril	000850736	1/1/1982	1/1/1991	4/3/2007	77.4	79.8	77.2	72.0	61.6	47.5							

Notes: - Sales exclude non-US and non-sales transactions, and do not include rebates found in the rebates files.  
- Further reductions for prompt payment of 2 percent were applied to direct sales.  
- Total Sales were \$28,822,447,176.41. If net revenue for a particular NDC and customer number for the prevailing WAC period was negative (-\$266,533,297.54 total) or if the revenue or quantity before chargebacks or price paid were missing or otherwise non-positive (\$5,756,677.95 total), or if the WAC was not available (\$804,596,173.94 total), it was dropped.  
- Wholesale entries from the chargebacks data without corresponding wholesale entries in the sales data were excluded (-\$161,637,794.73 total).  
- Wholesale entries from the chargebacks data were matched with wholesale entries in the

**Exhibit 6**  
**Percent of Schering Sales Made at Discounts**  
**No Greater Than 5% Off the Prevailing FDB WAC**  
**Branded Products Accrued in New York Counties<sup>1</sup>**  
**1997 - 2005**

Brand	9-Digit NDC	Date Added to FDB		Date of First Sale		Date of Last Sale		Year	
		(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)

sales data by prevailing WAC period.

- Price is calculated by customer, as identified by customer number and, for a small number of customer numbers that appear in multiple classes of trade, by customer number and class of trade.
- WAC values were retrieved from FDB by NDC as the prevailing WAC on the date of the sales transaction.
- FDB package sizes for certain NDCs of Proventil and Trilafon were replaced with package sizes derived using implied package sizes from Medispan.
- Ratios of average price to WAC were annualized to the customer and 11-digit NDC level, weighting by Gross Sales Activity in quantity. Gross Sales Activity was calculated as total sales by customer for blank-credit-code transactions in the Direct Sales data and end customer Contract Sales in the Indirect Sales, excluding non-US and non-positive revenue or quantity transactions, by calendar year and prevailing WAC period. Sales within 5 percent of WAC were then calculated by the weighted adjusted prevailing period revenue.
- The time period used for calculating both average prices and Gross Sales Activity was restricted to the relevant period, 1997 through 2005.
- A 9-digit NDC was considered to be effectively obsolete for a given quarter if its constituent 11-digit NDCs were all declared to be obsolete, discontinued, or converted to over-the-counter products. A 9-digit NDC was considered to be effectively obsolete for a given year if the first 11-digit NDC to be added to FDB within the 9-digit NDC was added after June 30th of that year, there were gross sales for less than six months during that year, or the 9-digit NDC was effectively obsolete for at least three quarters of the year. The percent of sales made at discounts no greater than 5 percent off the prevailing WAC was not calculated for years during which the 9-digit NDC was effectively obsolete or if there was no corresponding percentage "spread" between AWP and AMP.

<sup>1</sup> The table includes all branded Schering products listed in Exhibit B of the Revised First Amended Consolidated Complaint, except for Gyne-Lotrimin, for which Sales Data were not available.

Sources: - Schering Sales Data.  
- First DataBank Data.  
- Medispan Data.  
- Schering AMP Data.  
- Exhibit B to Revised First Amended Consolidated Complaint ("City of NY and New York Counties Revised Exhibit B.xls")  
- PRNewswire, "Schering-Plough Aims To Make CLARITIN® Premier Brand In OTC Category, Establish CLARINEX® As Premier Brand In Prescription Category," March 8, 2002.  
- Schering-Plough Corporation, Form 10-K, for the fiscal year ended December 31, 2001, Item 1.  
- Schering-Plough Corporation, Form 8-K, Exhibit 99.1, "Schering-Plough Reports Sales, Earnings For 2002 Third Quarter," October 24, 2002.

# EXHIBIT D



**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

In re:	)	MDL No. 1456
	)	Civil Action No. 01-12257-PBS
PHARMACEUTICAL INDUSTRY	)	Subcategory No. 06-11337
AVERAGE WHOLESALE PRICE	)	
LITIGATION	)	Hon. Patti B. Saris
	)	
	)	

**THIS DOCUMENT RELATES TO:**

*United States ex rel Ven-A-Care of the*

*Florida Keys, Inc. v. Schering Corporation,*

*Schering-Plough Corporation and*

*Warrick Pharmaceuticals Corporation*

Civil Action No. 09-CV-10547

*United States ex rel Ven-A-Care of the*

*Florida Keys, Inc. v. Schering Corporation,*

*Schering-Plough Corporation and*

*Warrick Pharmaceuticals Corporation*

Civil Action No. 00-10698

**Affidavit of Sumanth Addanki**

**August 6, 2009**

## **I. Introduction**

### **A. Qualifications and Assignment**

1. I am an economist and a Senior Vice President at NERA Economic Consulting (NERA). I hold A.M and Ph.D. degrees in economics from Harvard University and have specialized in the study of industrial organization. I have published articles on industrial organization economics and have written articles on antitrust issues for the American Bar Association (ABA) and other like institutions. These institutions have also invited me to lecture and comment on the market impact of various marketing, pricing and intellectual property strategies employed by firms in general as well as specifically in the pharmaceutical industry. I have testified by invitation before the Federal Trade Commission (FTC) on the analysis of competition in high technology industries.
2. I have consulted on many antitrust, intellectual property and commercial damages cases involving different industries, including agriculture, airlines, computer hardware and software, electronic components, health care, newspaper, office products, oil and gas, tobacco, and tools and hardware among many others. In addition, I have consulted extensively in the pharmaceutical industry, analyzing the market impact of various pricing, marketing and intellectual property strategies; assessing the impact of mergers and acquisitions; studying the effect of suppressed or delayed generic competition; and assessing economic damages, among other assignments. I have previously worked on matters involving allegations of AWP manipulation.
3. Some of my consulting assignments have led to my being qualified as an expert economist in Federal courts and testifying in those courts as an expert in the economics

of industrial organization. I have also testified on the appropriate analysis of pharmaceutical markets in proceedings before the FTC.

4. My curriculum vitae, which is appended to this report as Exhibit 1, includes a list of all my publications within the preceding ten years and my testimony as an expert at trial or in deposition within the preceding four years.
5. NERA is being compensated at my customary hourly rate of \$695 for my services in this matter.

## **B. Scope of the Engagement**

6. Ropes & Gray, counsel for Schering Corporation (“Schering”), asked me to perform the following calculations and analyses. For the branded Schering prescription drugs at issue, for the years at issue in this matter in which the drug was not effectively obsolete:
  - Calculate the difference, or “spread”, between the AMP (Average Manufacturer Price) and the AWP (Average Wholesale Price) as a percentage of the AMP for each of the accused Schering products;
  - Estimate the extent to which the products were sold by Schering at prices that were, on average, at or near their Wholesale Acquisition Cost (WAC).<sup>1</sup>
7. I initially performed the calculations requested and provided the results to Ropes & Gray, who incorporated them into a Powerpoint presentation provided to the Department of Justice (DOJ) and this court in February 2008. I subsequently performed similar calculations for the branded Schering drugs named in the action brought by various New York counties in this court. In performing the latter calculations, I used

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<sup>1</sup> For my purposes, I assume that products are effectively obsolete when they are declared to be obsolete or discontinued, or are being converted to over-the-counter products, or such events are imminent.

the same methodology that I had employed in connection with my DOJ analysis, with some refinements. My methodology for the New York calculations was fully described in the deposition that I gave in connection with that matter on November 20, 2008.

8. Ropes & Gray has asked me to update my DOJ calculations incorporating the refinements that I used in my New York analyses. I was also asked to assume that the relevant period was 1997 to 2003. The attached exhibits reflect my updated calculations. As is evident from the exhibits, the refinements that I have made to my methodology do not result in material changes; the results shown in the attached exhibits are virtually identical to the results that I initially reported to Ropes & Gray.

**C. Information Relied Upon**

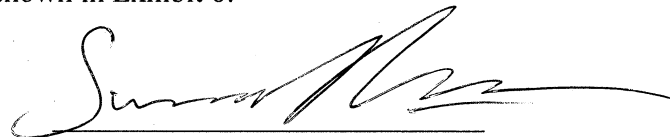
9. This affidavit is based on my professional training and experience, including my experience working in other cases involving allegations of AWP manipulation. I also rely on my own prior research and my review and analysis of materials related to this and related lawsuits. My staff at NERA and I have reviewed various materials, including sales data for the products at issue, data from pricing compendia, public documents and court filings. A list of the materials relied upon in preparing this report is attached as Exhibit 2.
10. I reserve the right to supplement or revise my conclusions if additional information is provided to me or if additional research, reflection or the correction of inadvertent errors leads me to change my current opinions.

## II. AMP-Based “Spreads”

11. I was asked to calculate the average difference, or “spread”, between AWP and AMP for the accused products as a percentage of AMP by NDC.<sup>2</sup> The results of these calculations are shown in Exhibit 3. As is evident from Exhibit 3, most of these “spreads” are below 30 percent of AMP, and those that are not show no particular pattern and are, moreover, generally only modestly higher.

## III. Wholesale Acquisition Cost (WAC)

12. The WAC is effectively a “list price” in the branded pharmaceutical industry, and a substantial portion of Schering’s sales of the branded pharmaceutical products at issue—over 85 percent—are actually made at or very near WAC, as shown in Exhibit 4. I have also performed this analysis by brand, and the results are reported in Exhibit 5. As the exhibit shows, many of the brands have over 90 percent of their sales made at or very near WAC. When these products are analyzed at the same level as the “AMP-based spreads” similar results obtain, as shown in Exhibit 6.



Sumanth Addanki

8-6-09

Date

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<sup>2</sup> Although the NDCs at issue have been identified at the 11-digit level, AMPs are reported to the Centers for Medicare & Medicaid Services at the 9-digit level. I was asked to calculate “spreads” at the 9-digit level.

# NERA

Economic Consulting

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## SUMANTH ADDANKI SENIOR VICE PRESIDENT

### Education

**Harvard University**  
Ph.D., Economics, 1986

**Birla Institute of Technology and Science, India**  
M.A. (Hons.), Economics, 1980

### Professional Experience

1986- **NERA Economic Consulting**  
Senior Vice President (current position)

1997 **New York University, Robert F. Wagner Graduate School of Public Service**  
Adjunct Assistant Professor of Public and Health Administration

1981-1986 **National Bureau of Economic Research Inc.**  
Research Associate and Computer Manager

1981-1985 **Harvard University**  
Instructor in Economics, Teaching Fellow, and Assistant Head Tutor

1980 **National Council of Applied Economic Research, India**  
Research Associate

### Honors and Professional Activities

Associate Editor, *Antitrust Magazine*, 2001 - 2002

Vice Chair, Economics Committee at Antitrust Section of ABA, 1999 - 2000

Danforth Center Award for Excellence in Teaching, Harvard University, 1983

## Testimony (2005 – 2009)

*In re Pharmaceutical Industry Average Wholesale Price Litigation: The City of New York, et al. v. Abbott Laboratories, Inc., et al.* United States District Court for the District of Massachusetts, MDL No. 1456, CA No. 01-12257-PBS, July 8, 2009.

*Mitsubishi Chemical Corporation, Mitubishi Tanabe Pharma Corporation, Encysive Pharmaceuticals Inc., Glaxo Group Limited, SmithKline Beecham plc, and SmithKline Beecham Corp., d/b/a GlaxoSmithKline v. Barr Laboratories, Inc. and Pliva-Hrvatska d.o.o.*, United States District Court for the Southern District of New York, CA No. 07 CV 11614 (Deposition Testimony) June 18, 19, 2009.

*In re Pharmaceutical Industry Average Wholesale Price Litigation: The City of New York v. Abbott Laboratories, Inc., et al.*, United States District Court for the District of Massachusetts, MDL No. 1456, CA No. 01-12257-PBS (Deposition Testimony) November 2008 and April 2009

*State of Missouri, ex rel. Jeremiah W. (Jay) Nixon, Attorney General and Missouri Department of Social Services, Division of Medical Services v. Dey, Inc., et al and Warrick Pharmaceuticals Corporation, Schering-Plough Corporation, Schering Corporation*, In the Circuit Court of the City of St. Louis State of Missouri, Case No. 054-1216 Division: 2. October 2008

*State of Wisconsin v. Amgen, Inc., Abbott Laboratories, AstraZeneca Pharmaceuticals, LP, AstraZeneca, LP, Aventis Pharmaceuticals, Inc. Baxter Healthcare Corporation, Ben Venue Laboratories, Inc. et al.*, The Circuit Court for Dane County in the State of Wisconsin, Case No. 04-CV-1709 (Deposition Testimony) May 2008

*The Commonwealth of Massachusetts v. Mylan Laboratories, Inc. IVAX Corporation, Warrick Pharmaceutical Corporation, Watson Pharmaceuticals, Inc. Schein Pharmaceutical, Inc., Teva Pharmaceuticals USA, Inc., PAR Pharmaceutical, Inc., Purepac Pharmaceutical Co, and Roxane Laboratories, Inc.*, U.S. District for the District of Massachusetts, Civil Action No. 03-11865-PBS (Deposition Testimony). April 2008

*Discover Financial Services, et al. v. Visa U.S.A. Inc., et al.*, U.S. District Court for the Southern District of New York, Civil Action No 04-CF-7844 (BSJ) (Deposition Testimony). December 2007.

*State of Alabama v. Abbott Laboratories, Inc., et al.*, In the Circuit Court of Montgomery County, Alabama, CV-05-219 (Deposition Testimony). November 2007.

*Dynax Corporation v. Chemguard, Inc.*, U.S. District Court for the Southern District of New York, Index: 06-CIV-5143 (CM)(ECF CASE) (Deposition Testimony). June 2007

*State of Colorado, et al. v. Warner Chilcott Holdings Company III, Ltd, et al.*, U.S. District Court for the District of Columbia, Civil Action No 1:05CV02182 (CKK) (Deposition Testimony). August 2007

*Novartis Corporation, Novartis Pharmaceuticals Corporation, and Novartis International AG v. Teva Pharmaceuticals USA, Inc.*, U.S. District Court for the District of New Jersey, Civil Action Nos. 04-4473 and 06-1130 (HAA)(MF) (Deposition Testimony). February 2007

*In re Pharmaceutical Industry Average Wholesale Price Litigation (MDL 1456)*, U.S. District Court for the District of Massachusetts, Civil Action No. 01-12257-PBS. December 2006

*Briant Chun-Hoon and Carlo Guglielmino v. McKee Foods Corporation, a Tennessee Corporation; and Does 1 through 100, inclusive*, U.S. District Court for the Northern District of California, Case No. C05-00620 VRW (Deposition Testimony). March 2006

*XIOtech Corporation v. Compellent Technologies, Inc., Michael Markovich, Russell B. Taddiken, Scott A. Winslow, Kristofer M. Zuber*, District Court for the State of Minnesota, Fourth Judicial District, Court File No.: 04-5065 (Deposition Testimony). March 2006

*Medtronic Minimed, Inc., v. Smiths Medical MD, Inc.*, U. S. District Court for the District of Delaware, Civil Action No. 03-776-KAJ (Deposition Testimony). February 2006

## Papers and Publications (1999 – 2009)

“Patent Settlement Agreements” with Alan J. Daskin, Chapter 85, Volume 3, in *Issues in Competition Law and Policy*, published by American Bar Association, Section of Antitrust Law, August, 2008.

“Who Defines the Relevant Market—The Core Customer or Marginal One?” with Alan Daskin, *Antitrust Insights*, National Economic Research Associates, Inc., Summer 2008.

“Schering-Plough and the Antitrust Analysis of Patent Settlement Agreements in Pharmaceutical Markets,” *Antitrust Insights*, National Economic Research Associates, Inc., 2005 and published in *Economics of Antitrust: Complex Issues in a Dynamic Economy*, Chapter 4, May 2007.

“Economists Lend Insight Into Antitrust Risk,” *IFLR (International Financial Law Review)*, *Mergers and Acquisitions* 2004, 2004.

“Market Definitions Using Econometrics: An Apparent Paradox Explained,” *Antitrust Insights*, National Economic Research Associates, Inc., 2001.

“Presenting Complex Technical and Economic Evidence: Lessons From The Trenches,” *Antitrust and Intellectual Property: The Crossroads*, American Bar Association, 2000.

July 2009



## **Exhibit 2**

### **Case Materials**

United States ex rel Ven-A-Care of the Florida Keys, Inc. v. Schering Corporation, Schering-Plough Corporation and Warrick Pharmaceuticals Corporation, Civil Action No. 09-CV-10547, The Parties' Joint Motion for a Scheduling Conference, June 26, 2009, and Exhibit A.

### **Data**

"DOJ NDCs.xls"

First DataBank Data.

Medicaid State Drug Utilization Data including "Definitions for State Drug Utilization Data Specifications", Centers for Medicare & Medicaid Services.

Medispan Data.

Schering AMP Data.

Schering Sales Data.

### **Miscellaneous**

PRNewswire, "Schering-Plough Aims To Make CLARITIN® Premier Brand In OTC Category, Establish CLARINEX® As Premier Brand In Prescription Category," March 8, 2002.

Schering-Plough Corporation, Form 8-K, Exhibit 99.1, "Schering-Plough Reports Sales, Earnings For 2002 Third Quarter," October 24, 2002.

Schering-Plough Corporation, Form 10-K, for the fiscal year ended December 31, 2001, Item 1.

**Exhibit 3**  
**Percentage "Spreads"<sup>1,2</sup> between AWP and AMP**  
**Accused Branded Products<sup>3</sup>**  
**1997 - 2003**

Brand Name	9-Digit NDC	Date Added to First DataBank	Date of First Gross Sales	Date of Last Gross Sales	1997	1998	1999	2000	2001	2002	2003
(a)	(b)	(c)	(d)	(e)	(Percent)						
Cedax	000850691	01/08/96	01/19/96	02/17/00	22.7 %	23.1 %	22.6 %	%	%	%	%
Cedax	000850777	01/08/96	01/19/96	02/22/00	25.1	26.2	25.2				
Cedax	000850834	01/27/97	02/18/97	01/19/00	25.7	27.4	27.3				
Celestone Soluspan	000850011	01/01/82	01/01/91	11/27/01	22.2	22.8	19.9	10.8	23.2		
Celestone Soluspan	000850566	01/01/82	01/01/91	09/30/07	25.0	25.6	25.4	30.3	24.3	24.6	30.6
Celestone Soluspan	000850942	01/01/82	01/01/91	09/26/07	22.8	23.5	22.0	20.7	26.0	24.9	28.7
Clarinox	000851264	12/26/01	01/02/02	09/30/07						24.3	28.3
Clarinox	000851280	05/21/03	05/21/03	08/02/07							31.2
Clarinox	000851334	12/22/04	01/11/05	09/26/07							
Claritin	000850458	04/14/93	04/15/93	04/03/07	23.2	22.9	22.8	23.7	24.7		
Claritin	000850612	10/15/96	10/14/96	04/23/01	23.4	22.8					
Claritin	000851128	02/06/97	02/24/97	01/29/07	23.0	22.7	22.7	23.2	24.8		
Claritin	000851223	05/25/99	04/20/99	04/03/07			22.7	23.4	25.0		
Claritin D	000850635	11/15/94	11/14/94	08/07/07	23.4	23.0	22.8	23.2	25.4		
Claritin D	000850640	08/27/96	08/26/96	09/24/99	23.0	22.9					
Claritin D	000851233	12/07/98	12/01/98	01/31/04			22.6	23.2	25.2		
Diprolene	000850517	03/19/87	01/01/91	09/27/07	26.8	26.3	26.5	27.4	28.1	29.3	31.9
Diprolene	000850575	08/07/83	01/01/91	09/27/07	25.7	25.5	24.4	26.4	27.1	27.6	34.8
Diprolene	000850634	12/05/91	12/01/91	12/20/06	27.4	27.7	27.7	28.5	29.9	32.2	33.2
Diprolene	000850962	05/19/88	01/01/91	09/27/07	22.9	22.7	22.8	23.5	24.2	24.1	29.4
Diprosone	000850475	01/01/82	01/01/91	04/12/00	21.0	22.5	22.9				
Diprosone	000850853	01/01/82	01/01/91	12/06/01	28.4	34.6	31.8	33.2	6.0		
Elocon	000850370	07/02/87	01/01/91	09/26/07	29.5	29.2	29.4	29.9	31.8	29.8	41.8
Elocon	000850567	07/02/87	01/01/91	09/30/07	29.9	29.4	29.8	29.5	30.7	32.4	36.2
Elocon	000850854	05/04/89	01/01/91	09/26/07	22.9	22.7	22.8	23.4	24.4	24.4	32.1
Eulexin	000850525	02/09/89	01/01/91	04/03/07	23.2	22.8	23.0	24.5	25.4		
Foradil	000851401	06/25/03	03/11/03	09/29/07							28.6
Foradil	000851402	07/16/03	06/02/03	09/30/07							
Fulvicin	000850496	01/01/82	01/01/91	10/24/02	24.6	23.4	22.5	23.2	24.7		
IMDUR	000851153	05/05/95	05/10/95	11/07/06	22.9	23.2	23.9	29.7	37.3	28.7	33.9
IMDUR	000853306	12/26/95	01/09/96	12/20/06	23.1	23.3	25.7	37.1	50.0	28.9	28.7
IMDUR	000854110	08/30/93	09/07/93	12/20/06	23.3	23.2	26.6	37.2	53.8	30.3	29.1
Intron A	000850120	06/12/86	01/01/91	07/11/03	22.9	23.2	22.6	25.4	24.0	22.6	
Intron A	000850285	06/12/86	01/01/91	01/07/04	22.8	22.8	22.7	24.9	23.3	22.6	
Intron A	000850539	12/01/88	01/01/91	09/27/07	23.0	22.5	22.6	25.0	23.8	25.7	28.0
Intron A	000850571	06/12/86	01/01/91	09/28/07	27.5	24.4	23.3	25.5	23.9	26.2	28.2
Intron A	000850647	06/12/86	01/01/91	11/08/02	25.4	22.6	23.0	25.1	22.9		
Intron A	000850689	08/10/92	07/27/92	06/24/96							
Intron A	000850769	05/18/93	05/19/93	11/21/97							
Intron A	000850923	05/18/93	05/19/93	01/13/98							

**Exhibit 3**  
**Percentage "Spreads"<sup>1,2</sup> between AWP and AMP**  
**Accused Branded Products<sup>3</sup>**  
**1997 - 2003**

Brand Name	9-Digit NDC	Date Added to First DataBank	Date of First Gross Sales	Date of Last Gross Sales	1997	1998	1999	2000	2001	2002	2003
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
Intron A	000850953	01/27/95	01/30/95	08/19/97							
Intron A	000851110	12/19/95	12/06/95	09/26/07	22.6	22.7	22.7	25.2	24.4	26.0	28.8
Intron A	000851133	01/30/97	02/04/97	09/27/07	23.3	83.3	82.2	25.2	24.2	25.6	28.3
Intron A	000851168	01/30/97	02/04/97	09/27/07	22.6	22.8	22.8	25.2	24.6	25.5	29.3
Intron A	000851179	01/30/97	02/03/97	09/05/07	22.4	22.6	22.6	25.3	23.7	25.2	28.6
Intron A	000851184	01/30/97	07/22/96	03/20/03	22.6	22.8	22.9	25.5	24.3	22.9	
Intron A	000851191	01/30/97	02/03/97	12/12/02	22.6	22.7	22.6	25.4	22.8	22.6	
Intron A	000851235	07/14/98	07/07/98	09/27/07			22.8	25.3	24.3	25.1	28.9
Intron A	000851242	07/14/98	07/07/98	09/27/07			22.9	25.7	24.4	24.4	28.5
Intron A	000851254	07/14/98	07/07/98	09/26/07			22.7	25.0	24.7	24.9	28.5
K-Dur	000850263	01/22/87	01/01/91	09/05/07	23.0	22.9	22.6	24.5	25.5	24.5	23.9
K-Dur	000850787	01/22/87	01/01/91	09/05/07	23.5	23.0	22.9	24.5	25.5	27.6	37.6
Lotrimin	000850182	01/01/82	01/01/91	08/14/03	27.2	25.7	22.6	23.7	26.8		
Lotrimin	000850613	01/01/82	01/01/91	10/09/03	24.2	24.3	30.8	28.8	20.5		
Lotrimin	000850707	04/29/84	01/01/91	02/03/04	22.8	22.9	22.7	24.3	25.4		
Lotrisone	000850809	01/03/01	12/12/00	09/25/07					33.9	44.5	28.3
Lotrisone	000850924	07/01/84	01/01/91	09/27/07	25.2	24.9	24.9	26.4			
Nasonex	000851197	10/16/97	10/14/97	03/21/07			23.1	23.9	25.0	29.7	27.8
Nasonex	000851288	12/17/04	12/20/04	09/30/07							
Nitro-Dur	000850819	03/31/94	03/22/94	09/28/07	25.3	31.3	26.0	26.3	29.8	31.5	30.5
Nitro-Dur	000853305	01/29/87	01/01/91	09/27/07	267.4	37.3	31.2	28.4	33.9	34.4	32.5
Nitro-Dur	000853310	01/29/87	01/01/91	09/26/07	26.5	30.7	26.7	27.7	31.5	34.0	31.2
Nitro-Dur	000853315	01/29/87	01/01/91	09/27/07	26.4	30.5	26.8	27.9	34.4	34.8	32.6
Nitro-Dur	000853320	01/29/87	01/01/91	09/27/07	26.3	29.5	26.2	27.0	31.5	32.5	31.2
Nitro-Dur	000853330	01/29/87	01/01/91	09/26/07	31.7	30.4	30.3	29.3	31.8	32.7	30.6
Normodyne	000850244	05/30/85	01/01/91	02/20/02	24.1	24.9	24.6	25.4	111.6		
Normodyne	000850362	01/12/89	01/01/91	05/15/03	135.4	158.6	92.4	74.1	59.4	30.7	
Normodyne	000850438	08/24/84	01/01/91	02/27/02	23.5	23.6	23.0	23.4	20.5		
Normodyne	000850752	08/24/84	01/01/91	02/08/02	24.4	24.3	23.7	24.7	22.9		
Peg Intron	000851279	01/31/01	02/06/01	09/28/07					22.7	27.3	29.7
Peg Intron	000851291	01/31/01	02/06/01	09/26/07					22.6	27.1	29.8
Peg Intron	000851297	02/02/04	02/10/04	09/27/07							
Peg Intron	000851304	01/31/01	02/06/01	09/27/07					23.0	27.1	29.6
Peg Intron	000851316	02/02/04	02/10/04	09/27/07							
Peg Intron	000851368	01/31/01	02/06/01	09/27/07					22.8	27.2	28.7
Peg Intron	000851370	02/02/04	02/16/04	09/28/07							
Proventil	000850208	02/19/87	01/01/91	03/30/03	40.6	27.7	24.4	29.3	30.5	42.1	
Proventil	000850209	02/19/87	01/01/91	10/18/02	53.1	27.2	24.2	25.7	40.5	29.6	
Proventil	000850252	01/01/82	01/01/91	01/03/01	21.6	19.9	22.1	7.4			
Proventil	000850315	09/12/85	01/01/91	06/12/01	71.5	16.1	19.0	25.9			

**Exhibit 3**  
**Percentage "Spreads"<sup>1,2</sup> between AWP and AMP**  
**Accused Branded Products<sup>3</sup>**  
**1997 - 2003**

Brand Name	9-Digit NDC	Date Added to First DataBank	Date of First Gross Sales	Date of Last Gross Sales	1997	1998	1999	2000	2001	2002	2003
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
Proventil	000850431	06/25/87	01/01/91	08/07/07	23.8	23.3	23.0	24.2	25.2		
Proventil	000850573	01/01/82	01/01/91	11/06/01	21.3	23.1	21.8	14.0	25.8		
Proventil	000850614	01/01/82	01/01/91	09/27/07	26.4	22.9	22.8	24.1	23.4	29.7	28.5
Proventil	000851132	10/16/96	12/16/96	09/30/07	37.7	28.0	23.1	23.9	40.9	30.9	27.6
Proventil	000851806	10/01/02	10/04/02	09/25/07							28.2
Rebetol	000851194	10/04/01	10/08/01	09/25/07						29.1	31.5
Rebetol	000851327	10/04/01	10/11/01	09/20/07						29.7	31.8
Rebetol	000851351	10/04/01	10/08/01	09/25/07						29.4	32.9
Rebetol	000851385	10/04/01	10/08/01	09/25/07						29.3	33.9
Rebetron	000851236	06/11/98	06/08/98	11/30/04			23.0	24.4	24.8	16.0	20.9
Rebetron	000851241	06/11/98	06/08/98	05/08/03			23.1	24.9	25.8	24.5	
Rebetron	000851258	07/14/98	07/07/98	03/15/05			23.1	25.1	26.1	22.8	21.4
Sebizon	000850600	01/01/82	01/01/91	10/16/00	22.4	22.6	22.9	21.9			
Solganal	000850460	01/01/82	01/01/91	10/02/02	23.0	22.7	22.9	22.7	24.4		
Temodar	000851244	08/19/99	08/23/99	09/19/07				22.8	24.5	30.2	28.2
Temodar	000851248	08/19/99	08/23/99	09/28/07				22.8	24.5	30.3	28.4
Temodar	000851252	08/19/99	08/23/99	09/10/07				22.8	24.5	29.6	28.4
Temodar	000851259	08/19/99	08/23/99	08/27/07				22.9	24.4	29.6	28.5
Theo-Dur	000850381	01/22/87	01/01/91	05/14/96							
Theo-Dur	000850487	01/22/87	01/01/91	10/16/00	55.6	32.6	23.4	24.9			
Theo-Dur	000850584	01/22/87	01/01/91	04/22/02	33.0	23.2	23.9	22.7			
Theo-Dur	000850620	01/22/87	01/01/91	07/06/95							
Theo-Dur	000850806	08/06/87	01/01/91	03/08/02	30.6	23.0	23.2	20.5			
Theo-Dur	000850875	01/29/87	01/01/91	02/14/96							
Theo-Dur	000850928	01/22/87	01/01/91	12/06/95							
Theo-Dur	000850933	01/22/87	01/01/91	03/08/02	35.1	24.0	24.4	26.9			
Trinalin	000850703	01/01/82	01/01/91	09/24/03	22.8	22.6	22.5	22.5	24.9	23.1	
Vancenase	000850041	01/01/82	01/01/91	01/26/01	25.4	27.0	24.1				
Vancenase	000850259	12/17/87	01/01/91	09/22/98							
Vancenase	000850649	07/20/92	07/01/92	11/06/02	25.3	23.7	23.0	27.4	32.7		
Vancenase	000851049	06/27/96	06/27/96	11/22/02	28.4	24.6	23.0	23.4	26.0		
Vanceril	000850736	01/01/82	01/01/91	04/03/07	24.3	23.8	23.1	26.2	24.7	31.5	
Vanceril	000851112	12/26/96	12/27/96	05/02/03	24.6	23.8	23.8				

Notes: - FDB package sizes for certain NDCs of Proventil and Vanceril were replaced with package sizes derived using implied package sizes from Medispan.

<sup>1</sup> "Spreads", (AWP - AMP) / AMP, were calculated as the weighted average of "spreads", calculated at the 11-digit NDC level, across all accused NDCs within a 9-digit NDC. At the 11-digit NDC level, "spreads" were calculated separately for each period during the calendar year during which neither the AWP nor the AMP had changed. These "spreads" were then aggregated over the calendar year and across 11-digit NDC "Gross Sales Activity in the AMP-Related Classes of Trade" (see Note 4).

**Exhibit 3**  
**Percentage "Spreads"<sup>1,2</sup> between AWP and AMP**  
**Accused Branded Products<sup>3</sup>**  
**1997 - 2003**

Brand Name	9-Digit NDC	Date Added to First DataBank	Date of First Gross Sales	Date of Last Gross Sales	1997	1998	1999	2000	2001	2002	2003
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)

<sup>2</sup> A 9-digit NDC was considered to be effectively obsolete for a given quarter if its constituent 11-digit NDCs were all declared to be obsolete, discontinued, or converted to over-the-counter products, or if "Gross Sales Activity in the AMP-Related Classes of Trade" had fallen substantially (by 90 percent or more) in anticipation of such events. A 9-digit NDC was considered to be effectively obsolete for a given year if the first 11-digit NDC to be added to First DataBank (FDB) within the 9-digit NDC was added after June 30th of that year, there were gross sales for less than six months during that year, or the 9-digit NDC was effectively obsolete for at least three quarters of the year. Spreads were not calculated for years during which the 9-digit NDC was effectively obsolete or where the percent of sales at or near WAC was not calculated for the reasons indicated in Exhibit 6.

<sup>3</sup> "Accused Branded Products" include all Schering products on NDC list "DOJ NDCs.xls".

<sup>4</sup> "Gross Sales Activity in the AMP-Related Classes of Trade" is defined as Total Gross Sales Activity, limited to the following classes of trade: 111, 121, 122, 123, 171, 172, 341, and 346. Total Gross Sales Activity is defined as direct sales with non-missing credit codes and contract sales from the indirect sales data. Gross sales exclude non-US transactions and transactions with either non-positive revenue or quantity.

Sources: - "DOJ NDCs.xls".

- First DataBank Data.

- Medispan Data.

- PRNewswire, "Schering-Plough Aims To Make CLARITIN® Premier Brand In OTC Category, Establish CLARINEX® As Premier Brand In Prescription Category," March 8, 2002.

- Schering AMP Data.

- Schering Sales Data.

- Schering-Plough Corporation, Form 8-K, Exhibit 99.1, "Schering-Plough Reports Sales, Earnings For 2002 Third Quarter," October 24, 2002.

- Schering-Plough Corporation, Form 10-K, for the fiscal year ended December 31, 2001, Item 1.

**Exhibit 4**  
**Distribution of Schering Sales by Discount Percentage**  
**Accused Branded Products<sup>1</sup>**  
**1997 - 2003**

Average Price as a Percent of Prevailing WAC			
Greater Than	Less Than or Equal To	Percent of Sales	Cumulative Percent of Sales
----- (Percent) -----			----- (Percent) -----
(a)	(b)	(c)	(d)
100		0.17 %	0.17 %
99	100	0.01	0.18
98	99	0.25	0.43
97	98	53.34	53.77
96	97	19.14	72.91
95	96	12.48	85.39
94	95	3.87	89.26
93	94	1.89	91.15
92	93	0.96	92.11
91	92	1.77	93.88
90	91	0.75	94.63
85	90	1.52	96.15
80	85	0.90	97.05
	80	2.95	100.00

- Notes:
- Sales exclude non-US and non-sales transactions, and do not include rebates found in the rebates files.
  - Further reductions for prompt payment of 2 percent were applied to direct sales.
  - Total Sales were \$32,192,886,846.25. If net revenue for a particular NDC and customer number for the prevailing WAC period was negative (-\$329,743,869.00 total) or if the revenue or quantity before chargebacks or price paid were missing or otherwise non-positive (\$7,109,459.73 total), or if the WAC was not available (\$1,009,418,721.80 total), it was dropped.
  - Wholesale entries from the chargebacks data without corresponding wholesale entries in the sales data were excluded (-\$177,850,185.07 total).
  - Wholesale entries from the chargebacks data were matched with wholesale entries in the sales data by prevailing WAC period.
  - Price is calculated by customer, as identified by customer number and, for a small number of customer numbers that appear in multiple classes of trade, by customer number and class of trade.
  - WAC values were retrieved from FDB by NDC as the prevailing WAC on the date of the sales transaction.
  - FDB package sizes for certain NDCs of Proventil and Vancertil were replaced with package sizes derived using implied package sizes from Medispan.
  - Ratios of average price to WAC were annualized to the customer and 11-digit NDC level, weighting by Gross Sales Activity in quantity. Gross Sales Activity was calculated as total sales by customer for blank-credit-code transactions in the Direct Sales data and end customer Contract Sales in the Indirect Sales, excluding non-US and non-positive revenue or quantity transactions, by calendar year and prevailing WAC period. The distribution of sales by discount percentage was then calculated by the weighted adjusted prevailing period revenue.
  - The time period used for calculating both average prices and Gross Sales Activity was restricted to the relevant period, 1997 through 2003.
  - A 9-digit NDC was considered to be effectively obsolete in a quarter if its constituent 11-digit NDCs were declared to be obsolete, discontinued, or converted to over-the-counter products.

<sup>1</sup> The table includes all branded Schering products on NDC list "DOJ NDCs.xls".

- Sources:
- "DOJ NDCs.xls".
  - First DataBank Data.
  - Medispan Data.
  - PRNewswire, "Schering-Plough Aims To Make CLARITIN® Premier Brand In OTC Category, Establish CLARINEX® As Premier Brand In Prescription Category," March 8, 2002.
  - Schering AMP Data.
  - Schering Sales Data.
  - Schering-Plough Corporation, Form 8-K, Exhibit 99.1, "Schering-Plough Reports Sales, Earnings For 2002 Third Quarter," October 24, 2002.
  - Schering-Plough Corporation, Form 10-K, for the fiscal year ended December 31, 2001, Item 1.

**Exhibit 5**  
**Percent of Schering Sales Made at Discounts**  
**No Greater Than 5% Off the Prevailing FDB WAC**  
**Accused Branded Products<sup>1</sup>**  
**1997 - 2003**

Brand	Percent of Sales within 5% of WAC	Share of National Medicaid Reimbursement for Accused Schering Drugs
(a)	(b)	(c)
Cedax	97.1 %	0.6 %
Celestone Soluspan	12.1	0.3
Clarinex	95.6	6.4
Claritin	94.6	20.1
Claritin D	95.9	6.3
Diprolene	92.4	2.4
Diprosone	86.2	0.0
Elocon	94.2	5.5
Eulexin	63.0	0.6
Foradil	74.4	0.4
Fulvicin	85.5	0.0
IMDUR	90.3	2.8
Intron A	74.9	2.1
K-Dur	87.3	6.1
Lotrimin	71.2	0.1
Lotrisone	87.0	6.6
Nasonex	91.8	6.0
Nitro-Dur	54.1	7.7
Normodyne	84.6	0.3
Peg Intron	87.5	6.0
Proventil	79.7	4.8
Rebetol	67.1	6.5
Rebetron	61.0	3.7
Sebizon	99.2	0.0
Solganal	80.7	0.0
Temodar	93.0	0.7
Theo-Dur	65.4	0.2
Trinalin	95.4	0.1
Vancenase	77.0	1.9
Vanceril	78.7	1.9

- Notes:
- Sales exclude non-US and non-sales transactions, and do not include rebates found in the rebates files.
  - Further reductions for prompt payment of 2 percent were applied to direct sales.
  - Total Sales were \$32,192,886,846.25. If net revenue for a particular NDC and customer number for the prevailing WAC period was negative (-\$329,743,869.00 total) or if the revenue or quantity before chargebacks or price paid were missing or otherwise non-positive (\$7,109,459.73 total), or if the WAC was not available (\$1,009,418,721.80 total), it was dropped.
  - Wholesale entries from the chargebacks data without corresponding wholesale entries in the sales data were excluded (-\$177,850,185.07 total).
  - Wholesale entries from the chargebacks data were matched with wholesale entries in the sales data by prevailing WAC period.
  - Price is calculated by customer, as identified by customer number and, for a small number of customer numbers that appear in multiple classes of trade, by customer number and class of trade.

**Percent of Schering Sales Made at Discounts  
No Greater Than 5% Off the Prevailing FDB WAC  
Accused Branded Products<sup>1</sup>  
1997 - 2003**

- WAC values were retrieved from FDB by NDC as the prevailing WAC on the date of the sales transaction.
- FDB package sizes for certain NDCs of Proventil and Vanceril were replaced with package sizes derived using implied package sizes from Medispan.
- Ratios of average price to WAC were annualized to the customer and 11-digit NDC level, weighting by Gross Sales Activity in quantity. Gross Sales Activity was calculated as total sales by customer for blank-credit-code transactions in the Direct Sales data and end customer Contract Sales in the Indirect Sales, excluding non-US and non-positive revenue or quantity transactions, by calendar year and prevailing WAC period. Sales within 5 percent of WAC were then calculated by the weighted adjusted prevailing period revenue.
- The time period used for calculating both average prices and Gross Sales Activity was restricted to the relevant period, 1997 through 2003.
- A 9-digit NDC was considered to be effectively obsolete in a quarter if its constituent 11-digit NDCs were declared to be obsolete, discontinued, or converted to over-the-counter products.
- National Medicaid reimbursement reflects the total amount the State reimbursed to pharmacists for the drug. This total is not reduced or affected by Medicaid rebates paid to the state. This amount represents both the Federal and State reimbursement and is inclusive of dispensing fees.

<sup>1</sup> The table includes all branded Schering products on NDC list "DOJ NDCs.xls".

- Sources:
- "DOJ NDCs.xls".
  - First DataBank Data.
  - Medicaid State Drug Utilization Data including "Definitions for State Drug Utilization Data Specifications", Centers for Medicare & Medicaid Services.
  - Medispan Data.
  - PRNewswire, "Schering-Plough Aims To Make CLARITIN® Premier Brand In OTC Category, Establish CLARINEX® As Premier Brand In Prescription Category," March 8, 2002.
  - Schering AMP Data.
  - Schering Sales Data.
  - Schering-Plough Corporation, Form 8-K, Exhibit 99.1, "Schering-Plough Reports Sales, Earnings For 2002 Third Quarter," October 24, 2002.
  - Schering-Plough Corporation, Form 10-K, for the fiscal year ended December 31, 2001, Item 1.



**Exhibit 6**  
**Percent of Schering Sales Made at Discounts**  
**No Greater Than 5% Off the Prevailing FDB WAC**  
**Accused Branded Products<sup>1</sup>**  
**1997 - 2003**

Brand	9-Digit NDC	Date Added to			Year						
		FDB	Date of First Sale	Date of Last Sale	1997	1998	1999	2000	2001	2002	2003
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
Cedax	000850691	1/8/1996	1/19/1996	2/17/2000	99.8 %	97.1 %	92.2 %	%	%	%	%
Cedax	000850777	1/8/1996	1/19/1996	2/22/2000	99.9	99.4	96.9				
Cedax	000850834	1/27/1997	2/18/1997	1/19/2000	99.4	87.2	94.4				
Celestone Soluspan	000850011	1/1/1982	1/1/1991	11/27/2001	98.1	98.8	97.4	97.9	99.1		
Celestone Soluspan	000850566	1/1/1982	1/1/1991	9/30/2007	15.0	13.6	21.0	9.7	30.6	28.6	20.2
Celestone Soluspan	000850942	1/1/1982	1/1/1991	9/26/2007	89.0	97.4	96.2	95.8	95.1	96.1	84.8
Clarinox	000851264	12/26/2001	1/2/2002	9/30/2007						95.7	95.4
Clarinox	000851280	5/21/2003	5/21/2003	8/2/2007							87.1
Clarinox	000851334	12/22/2004	1/11/2005	9/26/2007							
Claritin	000850458	4/14/1993	4/15/1993	4/3/2007	94.8	95.0	95.2	93.3	90.7		
Claritin	000850612	10/15/1996	10/14/1996	4/23/2001	96.6	96.2					
Claritin	000851128	2/6/1997	2/24/1997	1/29/2007	99.1	97.2	93.9	91.7	92.6		
Claritin	000851223	5/25/1999	4/20/1999	4/3/2007			96.9	95.3	95.7		
Claritin D	000850635	11/15/1994	11/14/1994	8/7/2007	97.6	95.9	97.9	95.8	65.5		
Claritin D	000850640	8/27/1996	8/26/1996	9/24/1999	98.3	96.7					
Claritin D	000851233	12/7/1998	12/1/1998	1/31/2004			97.4	97.5	65.7		
Diprolene	000850517	3/19/1987	1/1/1991	9/27/2007	92.3	93.9	93.4	93.3	91.8	75.7	82.1
Diprolene	000850575	8/7/1983	1/1/1991	9/27/2007	89.5	91.4	90.4	92.8	93.2	76.9	53.8
Diprolene	000850634	12/5/1991	12/1/1991	12/20/2006	93.8	95.3	95.0	94.2	94.0	42.9	67.5
Diprolene	000850962	5/19/1988	1/1/1991	9/27/2007	94.2	94.3	94.3	93.1	93.6	86.9	88.0
Diprosone	000850475	1/1/1982	1/1/1991	4/12/2000	79.4	79.7	81.3				
Diprosone	000850853	1/1/1982	1/1/1991	12/6/2001	86.5	81.8	79.8	94.9	96.4		
Elocon	000850370	7/2/1987	1/1/1991	9/26/2007	94.2	95.3	94.9	95.0	95.2	81.3	38.6
Elocon	000850567	7/2/1987	1/1/1991	9/30/2007	93.9	96.0	95.5	95.6	95.4	69.8	78.1
Elocon	000850854	5/4/1989	1/1/1991	9/26/2007	96.3	97.1	96.8	96.5	96.5	97.7	46.1
Eulexin	000850525	2/9/1989	1/1/1991	4/3/2007	68.8	70.2	67.1	63.6	48.6		
Foradil	000851401	6/25/2003	3/11/2003	9/29/2007							74.6
Foradil	000851402	7/16/2003	6/2/2003	9/30/2007							
Fulvicin	000850496	1/1/1982	1/1/1991	10/24/2002	88.3	89.0	86.6	81.4	74.5		
IMDUR	000851153	5/5/1995	5/10/1995	11/7/2006	97.0	96.7	94.1	65.9	78.1	83.3	82.7
IMDUR	000853306	12/26/1995	1/9/1996	12/20/2006	94.4	94.5	92.3	65.5	78.8	85.2	87.0
IMDUR	000854110	8/30/1993	9/7/1993	12/20/2006	91.5	94.4	87.7	63.9	69.8	80.4	87.5
Intron A	000850120	6/12/1986	1/1/1991	7/11/2003	80.2	73.5	63.6	38.8	36.6	59.7	
Intron A	000850285	6/12/1986	1/1/1991	1/7/2004	48.6	63.7	56.5	48.7	46.5	69.0	
Intron A	000850539	12/1/1988	1/1/1991	9/27/2007	69.0	68.6	62.1	63.8	63.9	75.7	72.6

**Exhibit 6**  
**Percent of Schering Sales Made at Discounts**  
**No Greater Than 5% Off the Prevailing FDB WAC**  
**Accused Branded Products<sup>1</sup>**  
**1997 - 2003**

Brand	9-Digit NDC	Date Added to			Year						
		FDB	Date of First Sale	Date of Last Sale	1997	1998	1999	2000	2001	2002	2003
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
Intron A	000850571	6/12/1986	1/1/1991	9/28/2007	60.3	57.5	50.4	35.4	38.4	58.9	54.5
Intron A	000850647	6/12/1986	1/1/1991	11/8/2002	78.9	79.3	79.9	53.5	63.4		
Intron A	000850689	8/10/1992	7/27/1992	6/24/1996							
Intron A	000850769	5/18/1993	5/19/1993	11/21/1997							
Intron A	000850923	5/18/1993	5/19/1993	1/13/1998							
Intron A	000850953	1/27/1995	1/30/1995	8/19/1997							
Intron A	000851110	12/19/1995	12/6/1995	9/26/2007	74.5	77.3	69.4	59.9	45.6	75.1	62.8
Intron A	000851133	1/30/1997	2/4/1997	9/27/2007	71.5	77.2	76.4	60.3	54.1	71.6	64.5
Intron A	000851168	1/30/1997	2/4/1997	9/27/2007	81.1	74.0	80.8	68.7	59.8	78.5	60.1
Intron A	000851179	1/30/1997	2/3/1997	9/5/2007	78.2	76.7	70.7	54.7	55.8	79.6	63.4
Intron A	000851184	1/30/1997	7/22/1996	3/20/2003	90.3	87.6	82.8	49.4	61.9	83.4	
Intron A	000851191	1/30/1997	2/3/1997	12/12/2002	89.6	81.8	82.6	65.0	69.7	76.0	
Intron A	000851235	7/14/1998	7/7/1998	9/27/2007			89.3	77.9	78.4	85.0	67.6
Intron A	000851242	7/14/1998	7/7/1998	9/27/2007			89.2	76.7	79.9	83.5	79.6
Intron A	000851254	7/14/1998	7/7/1998	9/26/2007			87.1	81.7	74.5	88.3	81.4
K-Dur	000850263	1/22/1987	1/1/1991	9/5/2007	83.8	87.7	90.2	86.2	70.1	38.3	85.9
K-Dur	000850787	1/22/1987	1/1/1991	9/5/2007	89.0	91.3	90.0	85.5	72.7	33.9	72.5
Lotrimin	000850182	1/1/1982	1/1/1991	8/14/2003	68.3	65.9	61.5	57.6	54.4		
Lotrimin	000850613	1/1/1982	1/1/1991	10/9/2003	62.7	71.2	81.9	90.8	87.3		
Lotrimin	000850707	4/29/1984	1/1/1991	2/3/2004	77.8	74.4	76.4	75.0	71.4		
Lotrisone	000850809	1/3/2001	12/12/2000	9/25/2007					46.6	94.3	84.9
Lotrisone	000850924	7/1/1984	1/1/1991	9/27/2007	89.5	89.9	88.0	86.4			
Nasonex	000851197	10/16/1997	10/14/1997	3/21/2007			92.4	87.6	91.7	91.2	94.5
Nasonex	000851288	12/17/2004	12/20/2004	9/30/2007							
Nitro-Dur	000850819	3/31/1994	3/22/1994	9/28/2007	88.0	83.8	77.0	79.6	75.3	87.0	79.8
Nitro-Dur	000853305	1/29/1987	1/1/1991	9/27/2007	64.4	64.0	52.7	61.1	51.1	61.0	70.5
Nitro-Dur	000853310	1/29/1987	1/1/1991	9/26/2007	62.6	56.9	55.0	57.3	53.5	56.1	69.7
Nitro-Dur	000853315	1/29/1987	1/1/1991	9/27/2007	63.6	58.1	59.1	60.5	50.2	63.5	82.8
Nitro-Dur	000853320	1/29/1987	1/1/1991	9/27/2007	57.7	54.2	58.0	54.5	49.9	62.6	73.7
Nitro-Dur	000853330	1/29/1987	1/1/1991	9/26/2007	62.4	56.4	56.3	59.0	51.0	68.6	85.4
Normodyne	000850244	5/30/1985	1/1/1991	2/20/2002	95.3	94.5	86.0	84.7	88.4		
Normodyne	000850362	1/12/1989	1/1/1991	5/15/2003	6.1	8.8	4.7	12.5	16.2	8.5	
Normodyne	000850438	8/24/1984	1/1/1991	2/27/2002	95.2	95.3	84.1	92.3	79.6		
Normodyne	000850752	8/24/1984	1/1/1991	2/8/2002	92.9	94.0	83.2	82.5	65.3		
Peg Intron	000851279	1/31/2001	2/6/2001	9/28/2007					96.7	93.9	67.1

**Exhibit 6**  
**Percent of Schering Sales Made at Discounts**  
**No Greater Than 5% Off the Prevailing FDB WAC**  
**Accused Branded Products<sup>1</sup>**  
**1997 - 2003**

Brand	9-Digit NDC	Date Added to			Year						
		FDB	Date of First Sale	Date of Last Sale	1997	1998	1999	2000	2001	2002	2003
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
Peg Intron	000851291	1/31/2001	2/6/2001	9/26/2007					96.4	95.5	78.5
Peg Intron	000851297	2/2/2004	2/10/2004	9/27/2007							
Peg Intron	000851304	1/31/2001	2/6/2001	9/27/2007					97.4	94.2	67.8
Peg Intron	000851316	2/2/2004	2/10/2004	9/27/2007							
Peg Intron	000851368	1/31/2001	2/6/2001	9/27/2007					97.0	95.6	76.7
Peg Intron	000851370	2/2/2004	2/16/2004	9/28/2007							
Proventil	000850208	2/19/1987	1/1/1991	3/30/2003	24.1	48.9	30.5	43.4	78.1	17.0	
Proventil	000850209	2/19/1987	1/1/1991	10/18/2002	38.8	79.3	76.6	86.7	75.7	98.4	
Proventil	000850252	1/1/1982	1/1/1991	1/3/2001	97.7	97.6	98.3	95.6			
Proventil	000850315	9/12/1985	1/1/1991	6/12/2001	33.8	46.9	67.1	70.5			
Proventil	000850431	6/25/1987	1/1/1991	8/7/2007	89.0	92.1	92.7	91.0	87.4		
Proventil	000850573	1/1/1982	1/1/1991	11/6/2001	97.4	97.2	97.1	96.2	58.2		
Proventil	000850614	1/1/1982	1/1/1991	9/27/2007	69.5	80.9	91.5	88.0	89.4	67.8	82.4
Proventil	000851132	10/16/1996	12/16/1996	9/30/2007	83.1	80.7	87.2	87.9	51.0	95.1	92.8
Proventil	000851806	10/1/2002	10/4/2002	9/25/2007							96.2
Rebetol	000851194	10/4/2001	10/8/2001	9/25/2007						84.2	59.0
Rebetol	000851327	10/4/2001	10/11/2001	9/20/2007						79.7	71.1
Rebetol	000851351	10/4/2001	10/8/2001	9/25/2007						75.8	51.7
Rebetol	000851385	10/4/2001	10/8/2001	9/25/2007						88.8	51.2
Rebetron	000851236	6/11/1998	6/8/1998	11/30/2004			83.7	75.7	41.6	59.8	59.6
Rebetron	000851241	6/11/1998	6/8/1998	5/8/2003			89.1	71.9	48.6	60.7	
Rebetron	000851258	7/14/1998	7/7/1998	3/15/2005			86.6	75.6	46.3	50.3	41.2
Sebizon	000850600	1/1/1982	1/1/1991	10/16/2000	98.8	99.2	99.8	99.2			
Solganal	000850460	1/1/1982	1/1/1991	10/2/2002	83.1	77.7	86.2	84.9	78.2		
Temodar	000851244	8/19/1999	8/23/1999	9/19/2007				97.0	93.8	87.9	86.5
Temodar	000851248	8/19/1999	8/23/1999	9/28/2007				97.5	94.8	93.0	88.0
Temodar	000851252	8/19/1999	8/23/1999	9/10/2007				95.5	92.0	90.2	82.9
Temodar	000851259	8/19/1999	8/23/1999	8/27/2007				96.5	92.7	91.7	92.1
Theo-Dur	000850381	1/22/1987	1/1/1991	5/14/1996							
Theo-Dur	000850487	1/22/1987	1/1/1991	10/16/2000	69.8	74.0	83.7	91.2			
Theo-Dur	000850584	1/22/1987	1/1/1991	4/22/2002	38.3	81.5	82.1	81.2			
Theo-Dur	000850620	1/22/1987	1/1/1991	7/6/1995							
Theo-Dur	000850806	8/6/1987	1/1/1991	3/8/2002	92.6	93.7	92.5	91.7			
Theo-Dur	000850875	1/29/1987	1/1/1991	2/14/1996							
Theo-Dur	000850928	1/22/1987	1/1/1991	12/6/1995							

**Exhibit 6**  
**Percent of Schering Sales Made at Discounts**  
**No Greater Than 5% Off the Prevailing FDB WAC**  
**Accused Branded Products<sup>1</sup>**  
**1997 - 2003**

Brand	9-Digit NDC	Date Added to			Year						
		FDB	Date of First Sale	Date of Last Sale	1997	1998	1999	2000	2001	2002	2003
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)
Theo-Dur	000850933	1/22/1987	1/1/1991	3/8/2002	39.0	76.4	76.5	81.3			
Trinalin	000850703	1/1/1982	1/1/1991	9/24/2003	95.7	96.2	96.4	95.4	88.9	90.5	
Vancenase	000850041	1/1/1982	1/1/1991	1/26/2001	40.3	43.4	41.7				
Vancenase	000850259	12/17/1987	1/1/1991	9/22/1998							
Vancenase	000850649	7/20/1992	7/1/1992	11/6/2002	65.2	64.2	71.1	67.2	52.6		
Vancenase	000851049	6/27/1996	6/27/1996	11/22/2002	60.2	83.4	91.8	90.9	58.3		
Vanceril	000850736	1/1/1982	1/1/1991	4/3/2007	77.4	79.8	77.2	72.0	61.6	49.4	
Vanceril	000851112	12/26/1996	12/27/1996	5/2/2003	93.3	90.9	84.4				

Notes: - Sales exclude non-US and non-sales transactions, and do not include rebates found in the rebates files.

- Further reductions for prompt payment of 2 percent were applied to direct sales.
- Total Sales were \$32,192,886,846.25. If net revenue for a particular NDC and customer number for the prevailing WAC period was negative (-\$329,743,869.00 total) or if the revenue or quantity before chargebacks or price paid were missing or otherwise non-positive (\$7,109,459.73 total), or if the WAC was not available (\$1,009,418,721.80 total), it was dropped.
- Wholesale entries from the chargebacks data without corresponding wholesale entries in the sales data were excluded (-\$177,850,185.07 total).
- Wholesale entries from the chargebacks data were matched with wholesale entries in the sales data by prevailing WAC period.
- Price is calculated by customer, as identified by customer number and, for a small number of customer numbers that appear in multiple classes of trade, by customer number and class of trade.
- WAC values were retrieved from FDB by NDC as the prevailing WAC on the date of the sales transaction.
- FDB package sizes for certain NDCs of Proventil and Vanceril were replaced with package sizes derived using implied package sizes from Medispan.
- Ratios of average price to WAC were annualized to the customer and 11-digit NDC level, weighting by Gross Sales Activity in quantity. Gross Sales Activity was calculated as total sales by customer for blank-credit-code transactions in the Direct Sales data and end customer Contract Sales in the Indirect Sales, excluding non-US and non-positive revenue or quantity transactions, by calendar year and prevailing WAC period. Sales within 5 percent of WAC were then calculated by the weighted adjusted prevailing period revenue.
- The time period used for calculating both average prices and Gross Sales Activity was restricted to the relevant period, 1997 through 2003.
- A 9-digit NDC was considered to be effectively obsolete for a given quarter if its constituent 11-digit NDCs were all declared to be obsolete, discontinued, or converted to over-the-counter products. A 9-digit NDC was

**Exhibit 6**  
**Percent of Schering Sales Made at Discounts**  
**No Greater Than 5% Off the Prevailing FDB WAC**  
**Accused Branded Products<sup>1</sup>**  
**1997 - 2003**

Brand	9-Digit NDC	Date Added to			Year						
		FDB	Date of First Sale	Date of Last Sale	1997	1998	1999	2000	2001	2002	2003
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)

considered to be effectively obsolete for a given year if the first 11-digit NDC to be added to FDB within the 9-digit NDC was added after June 30th of that year, there were gross sales for less than six months during that year, or the 9-digit NDC was effectively obsolete for at least three quarters of the year. The percent of sales made at discounts no greater than 5 percent off the prevailing WAC was not calculated for years during which the 9-digit NDC was effectively obsolete or if there was no corresponding percentage "spread" between AWP and AMP.

<sup>1</sup> The table includes all branded Schering products on NDC list "DOJ NDCs.xls".

Sources: - "DOJ NDCs.xls".  
 - First DataBank Data.  
 - Medispan Data.  
 - PRNewswire, "Schering-Plough Aims To Make CLARITIN® Premier Brand In OTC Category, Establish CLARINEX® As Premier Brand In Prescription Category," March 8, 2002.  
 - Schering AMP Data.  
 - Schering Sales Data.  
 - Schering-Plough Corporation, Form 8-K, Exhibit 99.1, "Schering-Plough Reports Sales, Earnings For 2002 Third Quarter," October 24, 2002.  
 - Schering-Plough Corporation, Form 10-K, for the fiscal year ended December 31, 2001, Item 1.

# EXHIBIT E



ROPES & GRAY LLP  
ONE INTERNATIONAL PLACE  
BOSTON, MA 02110-2624  
WWW.ROPESGRAY.COM



Oct 27 2008  
8:15PM

October 27, 2008

John T. Montgomery  
617-951-7565  
617-235-0077 fax  
john.montgomery@ropesgray.com

**BY E-MAIL AND U.S. MAIL**

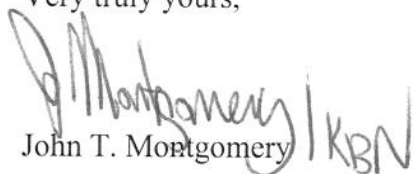
Joanne M. Cicala, Esq.  
Kirby McInerney LLP  
101 College Street  
Dripping Springs, TX 78620

Re: *In re Pharmaceutical Industry Average Wholesale Pricing Litigation*, MDL No. 1456

Dear Joanne:

In response to your October 23, 2008 letter, I confess to being confused by Plaintiffs' continued reliance on Exhibit C. Exhibit C was previously presented to Magistrate Judge Bowler, who considered and rejected it, and granted Schering a protective order with regard to discovery on its brand drugs. On September 22, 2008, as you know, Judge Saris overruled your objections to Magistrate Judge Bowler's ruling and largely continued the protective order that she had granted. In doing so, Judge Saris credited Dr. Addanki's AWP to AMP "spreads" and provided for only very limited discovery with regard to Schering's brand drugs, specifically in those few instances when Dr. Addanki's calculations revealed "an AWP to AMP spread of over 30% for the year." Schering has already produced most of the "sales and transaction data" for these limited number of periods and is producing today under a separate cover, in a single data set, all of the Schering sales and AMP data relied upon by Dr. Addanki in preparing his February 21, 2008 affidavit. See SP-MNYCC 0000002 through 0000004 and SP-MNYCC 0030981 through 0030982. In the event that Plaintiffs want to seek broader discovery related to the Schering-brand drugs, Judge Saris' September 22, 2008 Order requires them to "submit an expert affidavit proposing alternative expert calculations" that are "transparent" and "consistent" in their methodology. See 9/22/08 Order. Schering will not provide any additional discovery as to its brand drugs until Plaintiffs first satisfy the requirements that Judge Saris' Order imposes. If you wish, we would be glad to discuss our position with you at your convenience.

Very truly yours,

  
John T. Montgomery

ROPES & GRAY LLP

Joanne M. Cicala, Esq.

- 2 -

October 27, 2008

cc: All Counsel of Record via LexisNexis File & Serve

11354345\_1.DOC



# EXHIBIT F

NO. CV-2005-0219-PR

\*\*\*\*\*

NO. CV 2022-004988

(Assigned to the  
Honorable Janet  
Barton)

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF

HARVEY J. WEINTRAUB

September 18, 2006

Volume 1

\*\*\*\*\*

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF ARIZONA

3 THE STATE OF ARIZONA ) Cause No. 2:06-cv-00045-ROS  
4 ex rel. TERRY GODDARD, )  
5 Plaintiff, )  
6 VS. )  
7 ABBOTT LABORATORIES; )  
8 et al., )  
9 Defendants. )

10 \*\*\*\*\*

11  
12 IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
13 FIFTH DIVISION

14 STATE OF ARKANSAS, )  
15 VS. ) CASE NO. CIV 2004-634  
16 WARRICK PHARMACEUTICALS )  
17 CORPORATION; SCHERING-PLOUGH )  
18 CORPORATION; and SCHERING )  
19 CORPORATION. )

20 \*\*\*\*\*

21 DOCKET NO. X07-CV-03-0083296S (CLD)

22 STATE OF CONNECTICUT ) SUPERIOR COURT  
23 ) COMPLEX LITIGATION DOCKET  
24 ) AT TOLLAND  
25 VS. )  
26 DEY INC., ET AL )  
27 )

28 \*\*\*\*\*

1 IN THE COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR  
LEON COUNTY, FLORIDA

2

THE STATE OF FLORIDA )

3 Ex rel. )

)

4 VEN-A-CARE OF THE ) CIVIL ACTION NO.

FLORIDA KEYS, INC., ) 98-3032A

5 et al., )

Plaintiffs, )

6 )

VS. )

7 )

BOEHRINGER INGELHEIM )

8 CORPORATION; DEY, INC.; DEY, )

L.P.; et al., )

9 Defendants. )

10 \*\*\*\*\*

11 IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAI'I

12

13 STATE OF HAWAI'I, ) CIVIL NO. 06-00437

Plaintiff, ) DAE/BMK

14 )

VS. )

15 )

ABBOTT LABORATORIES INC.; )

16 ALPHARMA USPD, INC.; et al., )

Defendants. )

17

\*\*\*\*\*

18

19 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

20

THE PEOPLE OF THE STATE OF )

21 ILLINOIS, )

Plaintiff, )

22 )

VS. ) Case No. 05 CH 02474

23 )

ABBOTT LABORATORIES, et al., )

24 Defendants. )

25 \*\*\*\*\*

1 COMMONWEALTH OF KENTUCKY  
2 FRANKLIN CIRCUIT COURT  
3 DIVISION TWO

4 CIVIL ACTION NO. 03-CI-1135

5 COMMONWEALTH OF KENTUCKY )  
6 ex rel. GREGORY D. STUMBO, )  
7 ATTORNEY GENERAL, )  
8 Plaintiff, )  
9 VS. )  
10 WARRICK PHARMACEUTICALS )  
11 CORP., et al., )  
12 Defendants. )

13 \*\*\*\*\*

14 UNITED STATES DISTRICT COURT  
15 FOR THE DISTRICT OF MASSACHUSETTS

16 THE COMMONWEALTH OF )  
17 MASSACHUSETTS, )  
18 Plaintiff, )  
19 VS. ) Case No. 03-CV-11865-PBX  
20 MYLAN LABORATORIES, )  
21 INC., et al., )  
22 Defendants. )

23 \*\*\*\*\*

24 UNITED STATES DISTRICT COURT  
25 DISTRICT OF MASSACHUSETTS

26 IN RE PHARMACEUTICAL ) MDL No. 1456  
27 INDUSTRY AVERAGE ) Civil Action No. 01-12257-PBS  
28 WHOLESALE PRICE ) Judge Patti B. Saris  
29 LITIGATION ) Magistrate Judge  
30 ) Marianne B. Bowler

31 \*\*\*\*\*

32

1 IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT  
2 OF HINDS COUNTY, MISSISSIPPI

3 STATE OF MISSISSIPPI, )  
4 Plaintiff, )  
5 VS. ) CIVIL ACTION NO: G2005-2021  
6 ABBOTT LABORATORIES, )  
7 INC., et al., )  
8 Defendant. )

8 \*\*\*\*\*

9 IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS  
10 STATE OF MISSOURI

11 STATE OF MISSOURI, ex rel. )  
12 JEREMIAH W. (JAY) NIXON, )  
13 Attorney General, )  
14 AND )  
15 MISSOURI DEPARTMENT OF ) Case No: 054-1216  
16 SOCIAL SERVICES, DIVISION OF )  
17 MEDICAL SERVICES, ) Division No. 31  
18 Plaintiff, )  
19 VS. )  
20 DEY, INC., DEY, L.P., MERCK )  
21 KGaA, et al., )  
22 Defendant. )

20 \*\*\*\*\*

21

22

23

24

25

1 SUPERIOR COURT OF NEW JERSEY  
 2 UNION COUNTY  
 3 LAW DIVISION  
 DOCKET NO.: UNN-L-2329-04

4 CLIFFSIDE NURSING HOME, INC., )  
 5 on behalf of itself and all )  
 6 other similarly situated, as )  
 7 defined herein, )  
 8 Plaintiffs, )  
 9 VS. ) Civil Action  
 10 DEY, INC., WARRICK )  
 11 PHARMACEUTICALS CORPORATION, )  
 12 et al., )  
 13 Defendants. )

14 \*\*\*\*\*

15 SUPERIOR COURT OF NEW JERSEY  
 16 MONMOUTH COUNTY  
 17 LAW DIVISION  
 18 DOCKET NO.: MON-L-3136-06

19 INTERNATIONAL UNION OF )  
 20 OPERATING ENGINEERS, )  
 21 LOCAL 68 WELFARE FUND, ) Civil Action  
 22 Plaintiffs, )  
 23 VS. )  
 24 ASTRAZENECA, PLC, et al., )  
 25 Defendant. )

\*\*\*\*\*

STATE OF NEW YORK  
 SUPREME COURT : COUNTY OF ERIE

THE COUNTY OF ERIE, )  
 Plaintiff, )  
 VS. ) Index No. 12005-2439  
 ABBOTT LABORATORIES, )  
 INC. ET AL., )  
 Defendants. )

1 STATE OF NEW YORK  
2 SUPREME COURT

COUNTY OF OSWEGO

3 THE COUNTY OF OSWEGO, )  
4 Plaintiff, )  
5 -against- )  
6 ABBOTT LABORATORIES, )  
7 INC., AGOURON )  
8 PHARMACEUTICALS, INC., )  
9 ET AL., )  
10 Defendants. )

Index No. 06-0697

\*\*\*\*\*

10 STATE OF NEW YORK  
11 SUPREME COURT

COUNTY OF SCHENECTADY

12 THE COUNTY OF OSWEGO, )  
13 Plaintiff, )  
14 -against- )  
15 ABBOTT LABORATORIES, )  
16 INC., AGOURON )  
17 PHARMACEUTICALS, INC., )  
18 ET AL., )  
19 Defendants. )

Index No. 2006-886

\*\*\*\*\*

18  
19 COUNTY OF COMMON PLEAS  
HAMILTON COUNTY, OHIO

20 STATE OF OHIO, )  
21 Plaintiff, )  
22 -vs- )  
23 DEY, INC., et al., )  
24 Defendant. )

Case No. A0402047

Judge Myers

25



1           IN THE COMMONWEALTH COURT OF PENNSYLVANIA

2           COMMONWEALTH OF PENNSYLVANIA           )  
3 by Thomas W. Corbett, Jr.,                        )  
4 in his capacity as Attorney                        )  
5 General of the Commonwealth                        )  
6 of Pennsylvania,                                    ) No. 212 MD 2004  
7 Plaintiff,    )  
8    )  
9 VS.    )  
10    )  
11 TAP PHARMACEUTICAL PRODUCTS,                    )  
12 INC., et al.,                                        )  
13 Defendant.    )

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15 STATE OF SOUTH CAROLINA   IN THE COURT OF COMMON PLEAS  
16 COUNTY OF RICHLAND                       FOR THE FIFTH JUDICIAL CIRCUIT

17 STATE OF SOUTH CAROLINA,                        )  
18 and HENRY D. McMASTER,                        )  
19 In His Official Capacity as                        )  
20 Attorney General for the                        ) Civil Action No.  
21 State of South Carolina,                        ) 06-CP-40-4390  
22 Plaintiff,    )  
23    )  
24 VS.    )  
25    )  
26 WARRICK PHARMACEUTICALS                        )  
27 CORPORATION, SCHERING-PLOUGH                    )  
28 CORPORATION, and SCHERING                        )  
29 CORPORATION,                                        )  
30 Defendants.                                        )

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1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS  
2 COUNTY OF RICHLAND FOR THE FIFTH JUDICIAL CIRCUIT

3 STATE OF SOUTH CAROLINA, )  
and HENRY D. McMASTER, )  
4 In His Official Capacity as )  
Attorney General for the ) Civil Action No.  
5 State of South Carolina, ) 06-CP-40-4399  
Plaintiff, )  
6 )  
VS. )  
7 )  
WARRICK PHARMACEUTICALS )  
8 CORPORATION, SCHERING-PLOUGH )  
CORPORATION, and SCHERING )  
9 CORPORATION, )  
Defendants. )

10

11 \*\*\*\*\*

12 STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY  
BRANCH 7

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14 STATE OF WISCONSIN, )  
Plaintiff, )  
15 )  
VS. ) Case NO. 04-CV-1709  
16 )  
AMGEN, INC., et al., )  
17 Defendants. )

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1                   On the 18th day of September, 2006,  
2 between the hours of 9:09 a.m. and 1:40 p.m., at the  
3 Hamilton Park Hotel and Conference Center, Ashton  
4 Springfield Conference Room, 175 Park Avenue, Florham  
5 Park, New Jersey, before me, CYNTHIA VOHLKEN, a  
6 Certified Shorthand Reporter for the State of Texas,  
7 appeared HARVEY J. WEINTRAUB, who, being by me first  
8 duly sworn, gave an oral deposition at the instance of  
9 the Defendants Schering Corporation, Schering-Plough  
10 Corporation and Warrick Pharmaceuticals Corporation in  
11 said cause, pursuant to the Rules of Civil Procedure  
12 and Federal Rules of Civil Procedure.

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16 ALSO PRESENT:

17 Dr. John Lockwood, Ven-A-Care  
18 Ms. Peggy Forrest, The Breen Law Firm  
19 Mr. Brian Bobbitt, Videographer  
20 Ms. Angie Smith, Court Reporter  
21 Mr. Ricky Acker, Videographer

22 \*- \*- \*- \*- \*



1	INDEX	
2		
3	Appearances.....	11
4	HARVEY J. WEINTRAUB	
5	Examination by Mr. Moore.....	46
6	Examination by Mr. Anderson.....	178
7	Signature and Changes.....	213
8	Reporter's Certificate.....	215

9	VIDEOTAPE NUMBER	
10	1 .....	18
11	2 .....	105
12	3 .....	148

13	EXHIBITS	
14	NO. DESCRIPTION	PAGE
15	1 .....	65
16	Affidavit of Harvey J. Weintraub; May 4,	
17	2006 Letter from Barry R. Zitomer, M.D.,	
18	Re: Harvey Weintraub	
19	2 .....	66
20	Personal Data of Harvey J. Weintraub	
21	(WP00002144A-2146A) Confidential	
22	3 .....	151
23	October 12, 1993 Letter from Harvey	
24	Weintraub to Beth Rader & Ed Edlestein,	
25	Pharm D, PriceAlert, First DataBank,	
26	Subject: Change the AWP for Albuterol	
27	Sulfate Solution, 0.083% (FDB 001621)	
28	(TX-D&W - 012308)	
29	4 .....	155
30	July 16, 2002 Letter from Harvey Weintraub	
31	to Kay Morgan, First DataBank, Subject:	
32	Highest WAC Prices for Albuterol Sulfate	
33	Solution (FDB-AWP 04170) Highly	
34	Confidential	
35	5 .....	159
36	February 23, 1995 Letter from Harvey	
37	Weintraub to Martha McNeil, Subject:	
38	Increase in Price for the Albuterol	
39	Solution 0.5% mL (WP00001562A) Confidential	

1 NO.	DESCRIPTION	PAGE
2 6	.....	163
3	September 22, 1995 Letter from Harvey	
4	Weintraub to Martha McNeil, Subject:	
5	Increase in Price for the Albuterol	
6	Sulfate, USP Solution for Inhalation	
7	0.5% 20 mL (WP00001609A) Confidential	
8 7	.....	168
9	Chart of the 17gm Inhaler, Years 1996 to	
10	2002, pricing per company; Excerpts from	
11	1999 RedBook, 2000 RedBook, 1996 RedBook,	
12	1998 RedBook, 2001 RedBook, 2001 RedBook	
13 8	.....	187
14	June 4, 1993 Memo from R.M. Loughlin to	
15	Attendees, Subject: Warrick	
16	Pharmaceuticals/Albuterol Launch	
17	(SP 0012851-12854) Confidential	
18 9	.....	197
19	Dated Issued: 11/29/93, Rx Product	
20	Introduction/Change Notice, Trade Name:	
21	Albuterol Inhalation Aerosol - Warrick	
22	(WP00001515A) Confidential	
23 10	.....	202
24	Consulting Agreement as of January 1, 1994	
25	between Schering Corporation and M&H	
	Associates (WP00017230A-17239A)	
	Confidential, Attorneys Eyes Only	

1 THE VIDEOGRAPHER: Stand by. We are on  
2 the record September 18th, 2006. The time is 9:09  
3 a.m. This is the beginning of Tape 1.

4 Would the court reporter please swear in  
5 the witness.

6 (At this time the witness was sworn)

7 MR. MOORE: Before we get started, could  
8 we get announcements on the record, please? Let's  
9 just start here and go around the table.

10 MR. McDONALD: John McDonald for  
11 Warrick, Schering and Schering-Plough.

12 MR. MOORE: Mike Moore for Warrick,  
13 Schering and Schering-Plough.

14 MR. O'CONNOR: Brien O'Connor for  
15 Warrick, Schering and Schering-Plough.

16 MR. HEUCK: Bob Heuck for the State of  
17 Ohio.

18 MR. BATES: Roger Bates, the State of  
19 Alabama.

20 MR. BURLISON: Rex Burlison, State of  
21 Missouri.

22 MS. ADAMS: Jan Adams, State of  
23 Missouri.

24 MR. WINGET-HERNANDEZ: Michael  
25 Winget-Hernandez, the States of Wisconsin, Illinois,

1 Kentucky, Mississippi, the City of New York and New  
2 York counties represented by Kirby McInerney & Squire.

3 DR. LOCKWOOD: John Lockwood. I'm with  
4 Ven-A-Care of the Florida Keys and I'm not an  
5 attorney.

6 MS. FORREST: Peggy Forrest, paralegal  
7 for The Breen Law Firm.

8 MR. ANDERSON: Jarrett Anderson for  
9 Ven-A-Care.

10 MS. MCCARTHY: Colleen McCarthy from the  
11 Massachusetts Attorney General's Office.

12 MR. HEIDLAGE: Richard Heidlage,  
13 Massachusetts Attorney General's Office.

14 MR. FOOTE: Tim Foote, California's  
15 Attorney General's Office.

16 MR. MCNEELY: Hugh McNeely, Hagens  
17 Berman Sobol Shapiro. I represent the State of  
18 Connecticut and those -- and also those MDL plaintiffs  
19 in Massachusetts.

20 MR. CARROLL: James Carroll, Kirby  
21 McInerney & Squire for the City of New York and the  
22 various New York counties that we represent.

23 MR. HELLER: Joshua Heller, Florida  
24 Attorney General's Office.

25 MR. ROBBEN: Philip Robben, Kelly Drye &

1 Warren. Representing Dey, Inc.

2 MR. BURKE: Daniel Burke from Weitz &  
3 Luxenberg, representing Erie County, Schenectady  
4 County and Oswego County.

5 MR. PAUL: Nicholas Paul, the California  
6 Attorney General's Office.

7 MR. MOORE: How about on the phone?  
8 Yeah, how about on the phone.

9 (Discussion off the record)

10 MR. MOORE: Let's go off the record and  
11 let's see who's on the phone.

12 THE VIDEOGRAPHER: Off the record at  
13 9:11 a.m.

14 (Discussion off the record)

15 THE VIDEOGRAPHER: Stand by. The time  
16 is 9:14 a.m. We are back on the record.

17 THE REPORTER: We're back on the record.  
18 Could you please announce yourselves on the phone?

19 MR. PHELPS: Hi. This is Brad Phelps  
20 from the Arkansas Attorney General's Office.

21 MS. WILLIS: Good morning. This is  
22 Marguerite Willis representing Warrick with the law  
23 firm of Nexsen Pruet in Columbia, South Carolina.

24 MR. McDONALD: Anybody else on the  
25 phone?

1 MR. MOORE: Okay.

2 MR. DRESCHER: This is Patryk Drescher  
3 with Ropes & Gray, but I can -- I was calling in to  
4 set up the call, but I can jump off.

5 MR. McDONALD: Okay. Great. Thank you,  
6 Patryk.

7 MR. DRESCHER: Okay.

8 MR. MOORE: Okay. I guess that's  
9 everybody. The witness has been sworn and we need to  
10 discuss a couple of things before we start the  
11 deposition.

12 I've at least got an agreement with some  
13 here that statements that people would like to make,  
14 me included, about this deposition can be made this  
15 afternoon after 1:00 when Mr. Weintraub leaves and I'm  
16 willing to agree that all of those can be stipulated  
17 as if made before the deposition started or even  
18 inserted in the transcript before the deposition. So  
19 I think there's many here who are willing to do that.  
20 There may be some who are not and we'll just have to  
21 see where we are.

22 The second thing is we are going to  
23 reserve all objections until time of trial in all of  
24 these matters except as to the form of the question or  
25 the responsiveness of the answer and, of course,

1 privilege issues. And we are agreeable, and I assume  
2 you would be, that -- that -- that one objection is  
3 good for all. And so the first person who makes a  
4 form objection, everybody doesn't have to jump in and  
5 in a chorus of "object to form." It's going to be  
6 good for everybody to kind of take good advantage of  
7 the time that we have here.

8 What else, Michael?

9 MR. WINGET-HERNANDEZ: Just those  
10 "objection, form" or "objection, leading" will  
11 preserve the -- we agree that that will preserve the  
12 objection for all cases.

13 MR. MOORE: That's fine.

14 MR. ANDERSON: The court reporter has  
15 asked that I make a comment and that is when you place  
16 an objection, identify yourself by last name. So, for  
17 instance, I would say "Anderson, objection, form," so  
18 that they can make the proper record.

19 And I'm agreeable to have the  
20 stipulations talked through this afternoon, but I do  
21 want them placed at the front of the transcript.

22 MR. MOORE: I have no objection to  
23 placing all of the counsel discussion that takes place  
24 this afternoon or, for that matter, any afternoon of a  
25 deposition day at the beginning of the deposition. We

1 are just doing this not to unduly take up

2 Mr. Weintraub's time while he's here.

3 MR. WINGET-HERNANDEZ: I agree on behalf  
4 of my clients as well.

5 MR. MOORE: Does anybody disagree with  
6 that?

7 MR. HEUCK: Mr. Moore, this is Bob Heuck  
8 representing the State of Ohio. I don't disagree with  
9 that and I think that's a very good agreement.  
10 However, be sure that there is no argument that any  
11 portion of this deposition proceeded without notice of  
12 our position, I just want to briefly indicate that  
13 we're not waiving any objections to this proceeding or  
14 the defendants' document production and we're not  
15 agreeing to the amount of time that's been offered  
16 here as being adequate.

17 And I want to make clear that in our  
18 view, from the Ohio perspective, this is strictly a  
19 discovery deposition and that it's not a proper trial  
20 deposition because there has not been an opportunity  
21 to take a discovery deposition prior to this direct  
22 examination.

23 MR. MOORE: Okay.

24 MR. HEUCK: And I'll reserve additional  
25 comment until after Mr. Weintraub has departed.



1                   MR. MOORE: Thank you. Does anybody  
2 else feel like they need to say anything at this point  
3 or can they wait until this afternoon?

4                   All right. The other stipulation I was  
5 going to --

6                   MR. BURLISON: Excuse me.

7                   MR. MOORE: Yes.

8                   MR. BURLISON: Were you going to put on  
9 the record about the use of the prior depositions?

10                  MR. MOORE: I was just about to. Yeah.

11                  The other stipulation that my clients  
12 are willing -- they are going to make and we've made  
13 in other jurisdictions is that Mr. Weintraub has been  
14 deposed numerous times over the last four years or so,  
15 almost nine deposition days of testimony and we are  
16 willing to stipulate, and we have stipulated  
17 elsewhere, that that testimony can be used in any of  
18 those cases, Missouri, for example, as if those  
19 depositions were taken in that case.

20                  Now, we reserve all other objections,  
21 you know, to the testimony that might -- might be, but  
22 we won't object on the basis that the deposition was  
23 not taken in the case.

24                  And as I told Michael Winget-Hernandez  
25 before the deposition started, Mr. Weintraub has been

1 asked a lot questions. If someone asks him a question  
2 that he's been asked before, I do not intend to -- to  
3 try to stop that. Okay. That's just a decision  
4 people have to make. But he has been asked a lot of  
5 questions and based on this stipulation that testimony  
6 can be used. So I would just hope with the limited  
7 time we have that we could keep that to a minimum, but  
8 that's the stipulation we're making.

9 MR. WINGET-HERNANDEZ: We'll reserve  
10 whatever discussion on that point for a later time.

11 MR. MOORE: Okay. Does anyone else need  
12 to say anything before we start?

13 MR. McDONALD: Jarrett.

14 MR. ANDERSON: I think Michael is the  
15 one with the big speech.

16 MR. WINGET-HERNANDEZ: Well, I don't  
17 have a big speech. I just wanted to do a little bit  
18 of housekeeping.

19 First of all, I neglected to say that  
20 I'm appearing on behalf of Hawai'i and I would like  
21 the record to reflect that.

22 Secondly, I haven't received any  
23 response, substantive response, to my request of  
24 September the 11th concerning production of prices for  
25 Warrick drugs. My letters, I think, speak for

1 themselves. However, I will say that I anticipated by  
2 this time that we would have a comprehensive listing  
3 of Warrick AWP and net direct prices for the NDC  
4 numbers that I've provided you through Ropes & Gray  
5 and my position is that it's not possible for us to  
6 meaningful cross-examine the witness on the question  
7 of Warrick's price decisions without access to those  
8 prices as they are kept in the normal, ordinary course  
9 of business and that it will be impossible for us to  
10 adjourn the deposition without having had a reasonable  
11 time to review those prices and to confront  
12 Mr. Weintraub with his decisions related to them.

13                   That's all I had to say on the record  
14 right now.

15                   MR. HEUCK: Yeah. I had a few things  
16 earlier that I said I just would like to add. That we  
17 continue to object to the defendants' document  
18 production in this case as to Ohio because the  
19 documents we received were far in excess of what we  
20 requested and it was really just an undifferentiated  
21 mass of documents which doesn't comply with the Ohio  
22 Rules of Civil Procedure which require identification  
23 of the documents to the individual document requests.  
24 That makes it very difficult for us to participate  
25 meaningfully in this deposition. We are,

1 nevertheless, here, but we are not waiving any  
2 objections to the way the documents were produced in  
3 this case. I just want to make that clear.

4                   And I think that -- I think my other  
5 points were covered earlier.

6                   MR. WINGET-HERNANDEZ: I think it bears  
7 repeating, in case there is any ambiguity, that the  
8 objections that were made by one counsel are good as  
9 to -- by one counsel for his clients are good as to  
10 the rest of the plaintiffs.

11                   And, of course, we adopt those  
12 objections as well.

13                   MR. ANDERSON: For Ven-A-Care it's my  
14 understanding that we've also requested those prices  
15 in formal discovery requests that have been pending  
16 for quite some time regarding the price file and have  
17 not received the electronic form of that data.

18                   And, additionally, we have cross-noticed  
19 this deposition in conjunction with the State of  
20 Florida and, of course, reserve our right to complete  
21 our cross-examination, although I'm hopeful that that  
22 can be completed. Certainly there's a lot of  
23 information to cover with Mr. Weintraub given the  
24 direct and also just given his significant involvement  
25 with the company.

1 MR. RODA: Joe Roda for Pennsylvania.

2 We join in the objection voiced earlier  
3 that there has been no opportunity for a discovery  
4 deposition of Mr. Weintraub before taking his trial  
5 deposition.

6 Also, I would like to note that while he  
7 was still here I raised the question before he left of  
8 whether, notwithstanding the prior notice of this for  
9 adjournment at 1:00, we could ask Mr. Weintraub  
10 whether he felt up to continuing, be it for another  
11 half hour or hour, or whatever, in the interest  
12 possibly of shortening the week or at least allowing  
13 us within the week to get through his deposition. He  
14 seemed to me, and I defer to the observations of  
15 others, to be going still strong when we ended at  
16 1 o'clock today. He did not appear to be fatiguing or  
17 really in any kind of straits, stressed or otherwise.  
18 I would renew that request for the days that follow  
19 this week. We have a lot to cover with a lot of  
20 people asking questions. It seems to me there is at  
21 this point a significant chance we are not going to  
22 complete his deposition this week under the current  
23 schedule.

24 MR. WINGET-HERNANDEZ: I seem to recall  
25 that there was some indication that we were going to

1 leave whether Mr. Weintraub could go after 1 o'clock  
2 up to him. I may be mistaken, but I think --

3 MR. MOORE: You are mistaken.

4 MR. WINGET-HERNANDEZ: Very well.

5 MR. MOORE: Okay.

6 MR. McNEELY: Excuse me. I have a  
7 question. Mike, I have not seen the -- did you  
8 renotice the deposition? I haven't -- I've gotten, I  
9 believe, the third notice where you stated all the --  
10 at least the objections that are on the record. Has  
11 this deposition been renoticed with this site?

12 MR. MOORE: It has been renoticed with  
13 this site.

14 MR. McNEELY: Does it also include the  
15 ongoing -- the objections on the record that haven't  
16 been resolved by the courts yet?

17 MR. MOORE: You know, we'd have to pull  
18 them out, Hugh, and look at them. I don't know. I  
19 mean, what's been filed has been filed. I would be  
20 happy to pull those out and look at them. I didn't do  
21 them, so I'm not really sure. I don't want to  
22 misstate something, so I don't know.

23 MR. McNEELY: On behalf of the State of  
24 Connecticut we have a continuing objection of this  
25 going forward because there has not been a commission

1 issued from the State of Connecticut relative to the  
2 defendants' request or prayer for a commission being  
3 issued.

4                   Also, relative to the MDL classes and  
5 states that we represent, and that's the Hagens Berman  
6 Sobol Shapiro firm, there are also ongoing objections  
7 filed on the record and those -- to the extent that I  
8 need to say anything more, those objections are  
9 ongoing, also, with regard to all of the plaintiffs  
10 that we represent. We have entered into no agreements  
11 for time limitations relative to our  
12 cross-examination.

13                   MR. BATES: Roger Bates for the State of  
14 Alabama.

15                   I just want to make sure that we are  
16 clear, while I adopt the objections that have been  
17 raised earlier and don't need to restate those, I want  
18 to make sure I understood. At the beginning of the  
19 deposition today it was announced that the prior  
20 depositions of Mr. Weintraub would be and could be  
21 used in the various state litigations without  
22 objections being raised that they were not actually  
23 taken in those cases as I understood it. Does that  
24 same apply here? That is, that should Jarrett and  
25 Michael take such an outstanding deposition that I

1 don't need to ask any questions, it would be as though  
2 I were taking it for specific purposes of the Alabama  
3 litigation?

4 MR. MOORE: Yes.

5 MR. O'CONNOR: Yes.

6 MR. BATES: Thank you.

7 MR. MOORE: I was going to respond.

8 Anybody else want to make a statement?

9 MR. HEIDLAGE: Yes. This is Richard  
10 Heidlage for the Commonwealth of Massachusetts.

11 Just for the record, we adopt the  
12 objections made by the other parties. I'm not going  
13 to restate them here.

14 But I would also say that it is our  
15 position that the discovery that has occurred with  
16 regard to the pending case of the Commonwealth versus  
17 Mylan, that in that discovery that the responses are  
18 not consistent with the federal rules. We do not  
19 waive our rights to discovery. We do not waive our  
20 right to have the discovery in a form that we can use  
21 it before we actually take Mr. Weintraub's deposition.  
22 That means that we are not waiving -- by appearing  
23 here we will do what we can, but we are not waiving  
24 our right to separately notice Mr. Weintraub for  
25 deposition or to have him designated for deposition.



1 We also do not waive our rights to cross-examine him  
2 on any matter regardless of what anyone else does  
3 here.

4 I would just say for the record that we  
5 believe that it was improper for Warrick to notice the  
6 deposition in our case and then drop several million  
7 records and documents on us undifferentiated, not  
8 specific to the request that we made for documents, in  
9 essence, making it impossible for us to review the  
10 documents effectively and prepare effectively for this  
11 deposition and for the cross-examination. Therefore,  
12 we will cross-examine to the extent that we can, but  
13 we are not waiving our rights to reopen the deposition  
14 and reconvene in order to -- to continue the  
15 cross-examination based upon the records which we  
16 eventually do receive or are able to review.

17 MR. FOOTE: Tim Foote, California.

18 We adopt the same objections as  
19 Mr. Heidlage and the objections that Jarrett brought  
20 out with Ven-A-Care.

21 MR. HELLER: Josh Heller, State of  
22 Florida.

23 We do adopt the objections of our  
24 co-plaintiffs or of the other plaintiffs that are  
25 present.

1                   MR. BURKE: Dan Burke on behalf of Erie  
2 County, Oswego County and Schenectady County.

3                   We adopt all reservations and rights and  
4 objections previously voiced by counsel today.

5                   MR. HOPKINS: Bill Hopkins for South  
6 Carolina.

7                   Same objections.

8                   MR. HEUCK: Just since I went -- was one  
9 of the first ones to go, I guess I can come back and  
10 adopt the objections that were made after I -- just so  
11 there is no suggestion otherwise.

12                  MR. MOORE: Now, we've got to stop  
13 somewhere.

14                  MR. ANDERSON: We're all adopted.

15                  MR. HEIDLAGE: The endless circle.

16                  MR. BURLISON: That was our agreement to  
17 begin with.

18                  MR. HEUCK: Yeah. That's the agreement.

19                  MR. MOORE: Certainly fine with me.

20                  MR. WINGET-HERNANDEZ: Also, would you  
21 address, since you're going to make a statement, the  
22 30(b)(6) notice?

23                  MR. MOORE: Uh-huh.

24                  MR. WINGET-HERNANDEZ: Thank you.

25                  MR. MOORE: Mike Moore on behalf of

1 Warrick and Schering.

2           It's our -- it's our position that  
3 Mr. Weintraub has been deposed in AWP -- various AWP  
4 litigations for nine days prior to today. Deposed by  
5 counsel who -- some of whom are here today who had  
6 every incentive to cross-examine him and ask him the  
7 same questions in some instances over and over again.  
8 We've made him available for another week, albeit  
9 we're limiting it until 1 o'clock due to  
10 Mr. Weintraub's health. Mr. Weintraub does have  
11 Parkinson's disease. He is 77 years old. No one  
12 knows what his availability is going to be in the  
13 future, therefore, we felt that it was only prudent  
14 and proper to notice him in as many cases as we could  
15 for this deposition since we had people asking for his  
16 deposition. We thought that was the logical and right  
17 thing to do and invite everybody to the party and let  
18 them ask their questions.

19           It's going to be our position, and I  
20 want to make it very clear, that at 1 o'clock on  
21 Friday afternoon is going to be the end of the Harvey  
22 Weintraub deposition and we will not produce  
23 Mr. Weintraub again voluntarily for deposition after  
24 that point. We would ask all counsel present here  
25 today to cooperate and confer with each other over

1 allocation of time. Mr. Weintraub has been deposed at  
2 length on subjects and to the extent that it's -- you  
3 know, as I said earlier today, I'm not going to object  
4 to anybody asking him questions he's been asked  
5 before, but I just frankly don't understand that as a  
6 rational use of time. So I would ask everybody to  
7 cooperate, give everybody a chance to at least ask  
8 their case specific, state specific questions. I was  
9 able to conduct his direct examination in less time  
10 than I thought I would, passed him today, and I just  
11 ask everybody to work together and try to do that.  
12 All I can do is ask. I can't make anybody do  
13 anything, but our position will be Friday at 1 o'clock  
14 the deposition of Harvey Weintraub will be concluded.  
15 I understand people -- everyone has made it clear they  
16 have different views, but I'm stating my views.

17           As far as the document production,  
18 the -- there have been -- one of the first times, you  
19 know, I've been accused of having produced too many  
20 documents. We did produce a lot of documents out of  
21 an abundance of caution, but the main core of the  
22 Harvey Weintraub documents have been out there for  
23 years, literally, four years. Two cases have  
24 proceeded to trial based on Weintraub's -- the  
25 Weintraub record. We tried the West Virginia case

1 with the Weintraub records and we almost got to  
2 trial -- we were actually in the pretrial stage in  
3 Texas and discovery was concluded. So I wanted to  
4 point that out to everybody.

5           Michael, I will go over the corporate --  
6 the 30(b)(6) notices with you here today. We are  
7 prepared to designate Mr. Weintraub on a good number  
8 of those items, not all of them, of course, and I'll  
9 be happy to tell you which ones those are.

10           Let me see. As far as him staying after  
11 1 o'clock, it's been our assessment in working with  
12 Mr. Weintraub that he really does tire in the  
13 afternoon and we've -- he asked us for half days and  
14 we're going to -- we're going to honor his request in  
15 that regard.

16           As I said before, if someone is right in  
17 the middle of something and I thought we were at a  
18 breaking point, if someone is right in the middle of  
19 something and we have to go a few minutes over, I'm  
20 going to -- you know, I'm not going to quarrel with  
21 that.

22           Hugh, I'm not going to address all the  
23 stuff relating to Connecticut and the MDL, mostly  
24 because I'm not all that terribly familiar with it,  
25 except to say that your positions have been stated in

1 e-mails and letters and everything else and we  
2 understand you're not waiving any of those positions,  
3 is that --

4 MR. McNEELY: That's correct.

5 MR. MOORE: Nor are we. We took the  
6 position that the judge in Connecticut overruled your  
7 objections. There's disagreement about the state of  
8 the record and we understand -- we'll just agree to  
9 disagree on that. Is that okay?

10 MR. McNEELY: Oh, absolutely.

11 MR. MOORE: All right. I think that's  
12 all I have.

13 Anybody else want to say something  
14 or you want to go to the 30(b)(6)?

15 MR. RODA: Let me just state, if I  
16 could, Joe Roda again for Pennsylvania. I would ask  
17 that there be no communications by defense counsel  
18 with Mr. Weintraub from the time we adjourn until the  
19 time that we pick up. Differing courts may have  
20 differing rules on that. I know that there are judges  
21 in courts who prohibit communication while a witness  
22 is under cross-examination with a witness.

23 Secondly, I would respond to the point  
24 that we all should finish here within two and a half  
25 days. The direct testimony here was presented and

1 will presumably be presented in each case intact as it  
2 was asked here. To suggest that we on  
3 cross-examination should do a splicing from one  
4 deposition in one case to another deposition in  
5 another case does not allow for as effective of  
6 cross-examination to be played in the jury -- before  
7 the jury in each of our cases as you will have on your  
8 direct examination. I think it is apples to oranges  
9 and is an unfair limitation on the plaintiffs in their  
10 respective cases.

11 I also would point out that had we been  
12 at trial, at least under Pennsylvania's rules, and I  
13 presume the rules of many states, there would have  
14 been advance notice required of those exhibits to be  
15 used in the case in chief by Schering and Warrick in  
16 their case so that those of us preparing to  
17 cross-examine would have had the opportunity. To my  
18 knowledge there was no such advance notice of the  
19 exhibits that were used in the examination of  
20 Mr. Weintraub. Thus I think constituting another  
21 reason why we may need more time to do it.

22 We will all endeavor to do our best, but  
23 I don't see how any of us can guarantee that -- with  
24 the importance of each of our cases that we will all  
25 get this done in two and a half business days.

1                   MR. MOORE: All right. Well, let me  
2 respond to those points.

3                   On the cross-examination point, I don't  
4 know. Sometimes I found spliced cross-examination is  
5 effective. I mean, Mr. Weintraub has been asked about  
6 all these exhibits and we just -- you and I just  
7 disagree on that point.

8                   On the communication with Mr. Weintraub,  
9 we have been advised, and I know South Carolina  
10 counsel is here, that under -- South Carolina has very  
11 strict rules about not communicating with the witness  
12 during the deposition. Certainly we have nothing like  
13 that in Texas, but our view was was that we would  
14 comply with what we thought was the most stringent  
15 jurisdiction. So we have no intention. We are going  
16 to comply with the South Carolina rule. If there is  
17 something more stringent than the South Carolina rule,  
18 speak now or forever hold your peace, but it's a  
19 pretty stringent rule that says we're not supposed to  
20 talk to him once he's sworn in. And so since we're  
21 taking this deposition for purposes of also South  
22 Carolina, obviously reserving your position, that's  
23 what we are going to do with Mr. Weintraub. So that's  
24 what we intend to do. That ought to solve that  
25 problem, at least part of the problem.



1 MR. RODA: Thank you.

2 MR. HELLER: Michael, just so I  
3 understand. You're saying the substance of the South  
4 Carolina rule is that during recesses and as well as  
5 overnight breaks --

6 MR. MOORE: Yes.

7 MR. HELLER: -- that there is no  
8 substantive communication with the witness?

9 MR. MOORE: Yeah. There are some  
10 exceptions to the rule, which I don't know have come  
11 into play yet or not, but that's certainly my  
12 understanding is that after he's sworn in we don't  
13 have communications with him on breaks or overnight or  
14 anything else and we intend to abide by that.

15 Thanks, everybody. See you in the  
16 morning.

17 MR. WINGET-HERNANDEZ: 30(b)(6), please.

18 MR. MOORE: Oh, 30(b)(6). I'm sorry.  
19 Hang on a second.

20 All right. With respect to the -- on  
21 the 30(b)(6) notices that we have and are aware of,  
22 first let me address Wisconsin's. There are six  
23 categories. One and two we find pretty overbroad and  
24 ambiguous and really can't designate him on either one  
25 of those because it refers to pricing to retail

1 pharmacy and that's a huge universe, so we don't feel  
2 comfortable designating him on pricing to retail  
3 pharmacy. Three and four, which has to do with  
4 communications between Warrick and First DataBank, we  
5 will designate him on three and four. Okay. We  
6 cannot designate him on five and six of the Wisconsin  
7 notice because he had nothing to do with reporting AMP  
8 prices to HCFA or CMS or whoever.

9                   On the Mississippi notice --

10                  MR. WINGET-HERNANDEZ: Before you go  
11 on --

12                  MR. MOORE: Yeah.

13                  MR. WINGET-HERNANDEZ: -- on Wisconsin,  
14 let me just state for the record that our position is  
15 that -- through Ropes & Gray that Mr. Weintraub had  
16 been designated for all purposes and when he was  
17 designated there was no distinction made between the  
18 topics of the notice. So I think that for present I'm  
19 not waiving any objection to your limitations of the  
20 designation.

21                  MR. MOORE: Okay. Well, I went back and  
22 talked to the people at Ropes & Gray and I think they  
23 have a different view of it, but perhaps -- I wasn't  
24 in on those conversations, so I can't address it. I  
25 can just tell you what we're prepared to do here

1 today.

2 MR. WINGET-HERNANDEZ: I understand.

3 MR. MOORE: I think it would be faster  
4 just to say on the Mississippi 30(b)(6), let me just  
5 give you the numbers of the ones that we will  
6 designate him and then just assume that the other ones  
7 we do not.

8 MR. WINGET-HERNANDEZ: Very well.

9 MR. MOORE: All right. One; two only as  
10 to AWP, not the other pricing; three; four; five; six;  
11 seven; eight; 10; 12 and 13. That's Mississippi.

12 MR. WINGET-HERNANDEZ: Before you go  
13 on --

14 MR. MOORE: Yeah.

15 MR. WINGET-HERNANDEZ: -- regarding  
16 Mississippi, Mississippi is not here today for  
17 purposes of taking this 30(b)(6) deposition, but  
18 rather just responding and appearing at your  
19 invitation to cross-examine Mr. Weintraub in your  
20 preservation deposition and -- and we have no prior  
21 notice that you had any intention of designating  
22 Mr. Weintraub for the Mississippi 30(b)(6) deposition,  
23 but we can -- we may be able to work that out between  
24 now and the time that I begin my examination of him.

25 MR. MOORE: Well, Michael, I find that a

1 little strange to hear in light of the fact that  
2 pleadings were filed in Mississippi to get an  
3 additional 10-days' extension on answering the  
4 complaint because a Mississippi trial team was  
5 involved in preparing for Mr. Weintraub's deposition.  
6 And those are papers filed in Mississippi. So I don't  
7 know how you square that filing with the Court and  
8 what you just said, but I don't think they square up  
9 too well. And I will say we're here. You-all have  
10 represented to the Court in Mississippi that you need  
11 additional time to do this and so we expect you to do  
12 it and our position will be that if you don't do it,  
13 this was your chance and you should have taken it.

14 MR. WINGET-HERNANDEZ: Well, I  
15 appreciate that, but we got the same million documents  
16 or more from you in Mississippi that everybody else  
17 did.

18 MR. MOORE: Okay.

19 MR. WINGET-HERNANDEZ: So we've had the  
20 same issues responding to your deposition without  
21 reference to the 30(b)(6).

22 MR. MOORE: All right. Well, we stated  
23 our position.

24 MR. WINGET-HERNANDEZ: I think we just  
25 disagree.

1 MR. MOORE: Yeah, we do.

2 On Alabama we -- these are the ones we  
3 can designate him on. One, two, three, four, five,  
4 six, seven, nine, 10. That's it. All these subject  
5 to previously filed objections in all jurisdictions.

6 And on the pricing information, I think,  
7 is the one thing I didn't -- didn't -- we feel like,  
8 you know, more than adequate pricing information has  
9 been produced to depose Mr. Weintraub. He's been  
10 deposed at length already on these issues and I think  
11 we pointed out to you, or the lawyers from Ropes  
12 pointed out to you all of the pricing information that  
13 has been produced. So we just have a very fundamental  
14 disagreement on that as well, as we said in our  
15 letter.

16 MR. WINGET-HERNANDEZ: Right. I'm going  
17 to just stand by my correspondence and I don't think  
18 that I -- that I specifically sent that to you. I  
19 think I sent it to Steven, but I'm assuming that you  
20 have access to it or have already seen it, so I'm not  
21 going to repeat it here.

22 MR. MOORE: Yeah. That's fine.

23 MR. ANDERSON: Well, Mike, I don't want  
24 to argue about it, but --

25 MR. MOORE: I really don't either.

1 MR. ANDERSON: I know.

2 MR. MOORE: I really don't want to argue  
3 about it.

4 MR. ANDERSON: But let me just make sure  
5 I understand.

6 MR. MOORE: Well, you're about to argue  
7 about it.

8 MR. ANDERSON: No, I may not be. Are  
9 you-all saying -- when you say you think sufficient  
10 production has already occurred, are you talking about  
11 a WARPRICE daily extraction or a master price file  
12 data extraction? That's all I'm asking. Are you  
13 talking about that?

14 MR. MOORE: Jarrett, it is our -- under  
15 the circumstances of this deposition, which is a  
16 77-year-old man with Parkinson's disease who could go  
17 downhill on us at any time, more than adequate pricing  
18 information has been produced --

19 MR. ANDERSON: Okay.

20 MR. MOORE: -- over the course of five  
21 years and nine days of deposition and two trials to  
22 take a final deposition of Harvey Weintraub. So  
23 without getting down in a level that you want me to  
24 get down into, that's the position of my clients.  
25 Okay?